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The Commonwealth of Massachusetts

COMMITTEE FOR PUBLIC COUNSEL SERVICES



FIRST ANNUAL REPORT

1985



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The Commonwealth of Massachusetts

COMMITTEE FOR PUBLIC COUNSEL SERVICES

Douglas P. Woodlock, Chairman
William E. Bernstein, Vice Chairman
Mary Ann Driscoll, Secretary

Teresita Alicea
J. Elizabeth Cremens
Edward J. Duggan
Ellen Flatley
Nancy Gertner
Rudolph F. Pierce
Walter B. Prince
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James G. Reardon
Severlin B. Singleton, III
Robert L. Spangenberg
Joseph T. Travaline

Arnold R. Rosenfeld, Chief Counsel
Nancy Gist, Deputy Chief Counsel, Private Counsel Division
William J. Leahy, Deputy Chief Counsel, Public Counsel Division

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The Commonwealth of Massachusetts
Committee for Public Counsel Services

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December 19, 1985

The Chief Justice and Associate
Justices of the
Supreme Judicial Court
New Court House
Pemberton Square
Boston, MA 02108

RE: FISCAL YEAR 1985 ANNUAL REPORT

Dear Mr. Chief Justice and Justices:

Pursuant to Section 4 of Chapter 211D, it is my privilege to forward to you, as the appointing authority for the Committee for Public Counsel Services, the Committee's initial Annual Report.

The enclosed report sets forth in great detail the activity directed by the Committee during the first year of its operation and provides a comprehensive review of the work of the Committee's staff. As background to this report, it seems appropriate by means of this letter of transmittal to provide a sense of the manner in which the Committee organized itself initially and to focus on the broad principles which guided the Committee's work. In doing so, I hope to emphasize the commitment of all the Committee members to the goals of the legislation and the outstanding service which they have given to the implementation of those goals.

As you are aware, the Committee was initially appointed in late February, 1984, four months before the effective date of its formal stewardship of the Commonwealth's entire indigent representation system. As a consequence, for the first four months of its work, the Committee functioned with neither a budget nor a staff. The Committee members used this period to develop among themselves a consensus of approach to the implementation and oversight of this new system.

Because the membership appointed to the Committee represented diverse interests, some of which were antagonistic during

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the legislative process leading to enactment of Chapter 211D, leadership in the initial stages of internal organization required delicate diplomatic skills. Fortunately, the Committee numbered among its members Edward Duggan, whose personal character and professional lifetime of devotion to the provision of quality legal services to the poor made him exceptionally qualified to guide the Committee through this formative stage. As interim chairman until the election of the permanent officers, Mr. Duggan played a critical role in the formation of the Committee's consensus principles.

The key principle which the Committee members agreed upon was the necessity to create a strong, independent yet fully accountable staff. Under Chapter 211D, Section 13, the Committee itself is given specific statutory responsibility for the appointment of three senior staff members: the Chief Counsel, the Deputy Chief Counsel for the Public Counsel Division and the Deputy Chief Counsel for the Private Counsel Division. The Committee members were strongly of the view that the selection process for these statutorily mandated positions should be as wide-ranging, thorough and unrestricted as possible.

The Committee received applications for its senior positions from over one hundred applicants, including current and past chief executive officers of other state public defender organizations and leaders in public defender work throughout the country. For those chosen to be finalists, an exhaustive interviewing schedule was established. All members of the Committee made themselves available to interview applicants on an expedited basis throughout May and June. This process included two hour interviews with finalists two and three nights a week during sessions frequently lasting until 11 o'clock in the evening. As a result of this exhaustive recruitment and evaluation process and after a year's experience, the Committee is fully satisfied that its selection of chief counsel--and thereafter of the two deputy chief counsel positions--was fully informed and resulted in the choice of the best possible candidate for the positions.

Having chosen the senior staff, the Committee immediately moved to invest in the Chief Counsel the authority to make personnel judgments regarding the rest of the staff pursuant to guidelines adopted by the Committee. The Committee chose to retain no day-to-day responsibility over staff matters in order to avoid even a suggestion of interference with the development of a professional organization. The Committee, however, in addition to establishing practices and procedures for staff recruitment and evaluation also established a firm goal of

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aggressively encouraging the hiring of qualified minority candidates for staff positions. Recognizing that recruitment practices in the past were perceived as, at best, apathetic, the Committee articulated a vigorous policy to achieve this goal. As the Annual Report makes clear, considerable progress has been made toward achievement of this goal.

Other goals were clearly set by the Committee for its staff. Those goals included:

- (1) ensuring minimum disruption in the conduct of indigent representation during the initial stages of implementation of Chapter 211D;
- (2) providing prompt, efficient, fair and cost-effective payment systems for lawyers rendering services to indigent parties;
- (3) acting as general advocate and resource to legislative and other non-judicial forums in support of the interests of the Committee's clients and the defense bar; and
- (4) structuring comprehensive training and support services for attorneys providing litigation services to indigent parties.

The staff was granted substantial discretion in implementing those goals. As the enclosed Annual Report establishes in great detail, the Committee's staff has consistently demonstrated an extraordinary ability to achieve its goals and to enhance the broad structure the Committee has sought to outline.

Throughout, it has been clear that the overarching concern of the Committee in establishing its goals has been to provide the very best legal services to our clients. In this, the members of the Committee, each of them private attorneys, has acted according to the highest principles of the bar. These are not new principles. They were well stated forty years ago by Henry Stimson who, at the conclusion of a long public and private career, wrote that he had come:

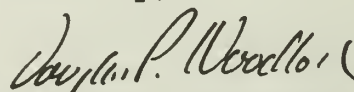
...to realize that without a bar trained in the traditions of courage and loyalty our constitutional theories of individual liberty would cease to be a living reality. I learned of the experience of those many countries possessing constitutions and bills of rights similar to our own, whose citizens had nevertheless lost their liberties because they

did not possess a bar with sufficient courage and independence to establish those rights by a brave assertion of the writs of habeas corpus and certiorari. So I came to feel that the American lawyer should regard himself as a potential officer of his government and a defender of its laws and constitution. I felt that if the time should ever come when this tradition had faded out and the members of the bar had become merely the servants of business, the future of our liberties would be gloomy indeed.

H. Stimson, On Active Service in Peace and War, xxi-xxii (1948). Mr. Stimson's conclusions are shared by every member of the Committee.

The commitment of Committee members to serve both as officers of the government and defenders of the individual rights embodied in the Constitution was perhaps most graphically exemplified during the past year by two seemingly unrelated events: one, the award of the Massachusetts Bar Association's Delivery of Legal Services Award to Edward J. Duggan for forty-five years' devotion to the provision of quality legal services to the indigent; and, the other, the appointment of Charles Ray Johnson as an Associate Justice of the Boston Municipal Court. It is especially appropriate that the announcement of Mr. Duggan's award in the Massachusetts Bar Association Newsletter and excerpts from Judge Johnson's remarks on his elevation to the Court be attached as appendices to the Committee's Annual Report. Whether one looks to the Massachusetts Bar Association's recognition of Mr. Duggan as one who has devoted himself to "one goal--the provision of quality representation to the indigent...regardless of political pressure, criticism or apathy," or to Judge Johnson's adjuration to "my brothers and sisters whom I leave in pursuit of th[e] great art [of advocacy]...never [to] temper your advocacy, for you are the preservers of social justice and the protectors of individual liberties," the larger goals of Chapter 211D have been exemplified and forcefully enunciated by members of the Committee. These are the goals which have guided the Committee in its first year; they will continue to guide it in the years to come.

Sincerely,



Douglas P. Woodlock
Chairman

DPW/pd

Enclosure

I. INTRODUCTION

The Committee for Public Counsel Services (CPCS) was established by Chapter 673 of the Acts of 1983 of the Massachusetts State Legislature, which is set out in Chapter 211D of the Massachusetts General Laws (see Appendix A). This report represents a review of the Committee's first year of operation in planning, overseeing, and coordinating the delivery of certain criminal and non-criminal legal services for persons who cannot afford their own attorney and who are, by law, required to be represented by counsel.

Prior to the enactment of Chapter 673 of the Acts of 1983, no single agency was responsible for the delivery of legal services to indigents. The Massachusetts Defenders Committee (MDC) which had been in existence since 1960, provided the principal representation in serious criminal cases through its salaried full-time public defender staff. The County Bar Advocate Program, affiliated with the county bar associations, provided the bulk of representation in all counties except Suffolk (Boston) and Berkshire, where the judges appointed private attorneys from court lists under various rule provisions. The Roxbury Defenders Committee (RDC), a private non-profit corporation, provided representation in cases in the Roxbury District Court and the Suffolk Superior Court. With the exception of MDC, the other programs and the private bar appointments were all paid from funds administered by the Chief Administrative Justice of the Trial Court. Chapter 673 consolidated all of these programs, placing them under the auspices of one fifteen-member Committee appointed by the Supreme Judicial Court.

The establishment of the Committee for Public Counsel Services brings about a radical change in the responsibility for the delivery of criminal and certain non-criminal legal services for the indigent and marginally indigent. Instead of the judge controlling the appointment and assignment of counsel, the Committee now has the responsibility. Except in cases of first- and second-degree murder, where the appointment of counsel by the Committee is subject to the approval of the judge, the court now appoints the Committee and has nothing to do with the appointment except to certify the bill of private attorneys. The Committee must establish a system for the appointment or assignment of counsel at any stage of the proceedings in which the laws of the Commonwealth or rules of the court require that a person be represented by counsel.

In setting up its system, the Committee is under certain constraints. It must utilize its Public Counsel Division (formerly the Massachusetts Defenders Committee and Roxbury Defenders Committee), its full-time attorneys, to handle all probable cause felony cases, except when there are co-defendants in the case or a conflict of interest with another client. It must assign its Private Counsel Division to handle misdemeanor cases, cases not to be handled by the Public Counsel Division, and cases assigned by the Probate and Family Courts or the Housing Court. Concurrent felony cases, where coverage has been divided for the past several years by the public defenders and private counsel, are left to the Committee's discretion for their assignment.

The Committee is also responsible for the establishment of standards for counsel. It is required to "establish standards and guidelines for the training, qualification, and removal of counsel in the public and private counsel divisions who accept its appointments," and it must also establish standards for the Public and Private Counsel Divisions which shall include (a) vertical representation, (b) required training, (c) caseload limitation, (d) investigative service, (e) social service, (f) expert witness availability, (g) support service, and (h) adequate supervision. Finally, it must monitor and evaluate compliance with the standards and the performance of counsel to ensure competent representation.

The Committee is also responsible for the development of training programs for both the Public and Private Counsel Divisions, for the appointment of counsel in murder cases and all appellate cases, and for compensating attorneys who receive appointments under the auspices of the Private Counsel Division, a task previously handled by the Trial Court. In addition, the Committee has the responsibility to establish rates of compensation payable to private attorneys, but only after holding public hearings and subject to appropriation.

It is clear that the responsibilities of the Committee are enormous. This report covers the period from February 27, 1984, until June 30, 1985, the Committee's first year of operations. It is a review of the accomplishments of the Committee during that period, a time of change, reorganization and new management in the defense of indigents.

II. THE COMMITTEE

While the legislation specified that the new system not take effect until July 1, 1984, it provided for the immediate appointment of the Committee which was to consist of fifteen persons appointed by the Massachusetts Supreme Judicial Court. On February 27, 1984, the Justices named the following persons as the initial members of the Committee:

Teresita Alicea, Esq., of Springfield
William E. Bernstein, Esq., of Worcester
J. Elizabeth Cremens, Esq., of Boston
Mary Ann Driscoll, Esq., of Boston
Edward J. Duggan, Esq., of Boston
Ellen Flatley, Esq., of Manchester
Nancy Gertner, Esq., of Boston
Charles R. Johnson, Esq., of Boston
Walter B. Prince, Esq., of Boston
Robert H. Quinn, Jr., Esq., of Boston
James G. Reardon, Esq., of Worcester
Severlin B. Singleton, III, Esq., of Boston
Robert L. Spangenberg, Esq., of Cambridge
Joseph T. Travaline, Esq., of Burlington
Douglas P. Woodlock, Esq., of Boston

After electing Edward J. Duggan as temporary chairman (see Appendix B), Ellen Flatley as temporary vice chairman, and Douglas P. Woodlock as temporary secretary, the Committee took interim steps to insure the uninterrupted operation of the system of provision of counsel as of July 1, 1984, when Chapter 673 would formally become effective. It established subcommittees to meet with legislators, judges, and others to obtain relevant information. During the organizational stages it met several times a week to consider policies. In order to minimize disruption in the conduct of representation in the courts, the Committee took several steps. It prepared and submitted to the Supreme Judicial Court proposed transitional procedures for the appointment and assignment of counsel. Under these temporary procedures, which were adopted by the Supreme Judicial Court, judges were to continue appointing counsel until the Committee was prepared to institute new appointment systems. The Committee established billing procedures to insure that private attorneys appointed under Rules 8

and 53 would be paid. It solicited and signed contracts with the bar advocate programs to continue their operations, it approved a new bar advocate program for Berkshire County; and it arranged for the full-time public defenders--the Massachusetts Defenders Committee and the Roxbury Defenders Committee--to maintain their representation as well.

The Committee's major initial task was to select a Chief Counsel and two Deputy Chief Counsel. After a process of national advertisement, screening, and interviewing of over 100 candidates, the Committee named Arnold R. Rosenfeld as Chief Counsel, Nancy Gist as Deputy Chief Counsel of the Private Counsel Division, and William J. Leahy as Deputy Chief Counsel of the Public Counsel Division. The Committee then elected its own regular officers: Douglas P. Woodlock, Chairman; William E. Bernstein, Vice Chairman; Mary Ann Driscoll, Secretary.

On October 30, 1984, Charles R. Johnson, Esquire, of Boston was appointed an associate justice of the Boston Municipal Court, and he resigned from the Committee (see Appendix C). The Court appointed Rudolph F. Pierce, Esquire, of Boston to replace him. Mr. Pierce had previously served as an associate justice of the Superior Court. In addition, four original members of the Committee, Edward Duggan, Douglas Woodlock, Elizabeth Cremens and Ellen Flatley, were reappointed.

During the year, the Committee began a number of initiatives to focus the defense of indigents in new directions:

A. Entitlement and Procedures for Appointment of Counsel

- I. The Committee undertook a comprehensive determination of who is entitled to counsel by analyzing the laws, court rules, and the case law. As a result of that inquiry, the Committee has recognized that there is a right to assigned counsel for parties determined to be unable to procure counsel with their own funds in the following matters:
 - a. In the District Court and Boston Municipal Court Departments:
 - Criminal matters in which there is a possibility of incarceration
 - Petitions to commit as mentally ill, G.L. chapter 123, section 5
 - b. In the Juvenile Court Department and the juvenile sessions of the District Court Department:
 - Delinquency matters
 - Hearings to bind over to the Superior Court
 - Care and protection matters, G.L. chapter 119, section 29
 - CHINS matters, G.L. chapter 119, section 39F

- Foster care review hearings, G.L. chapter 119, section 29B
- c. In the Housing Court Department:
 - Contempt matters
- d. In the Probate and Family Court Department:
 - Contempt matters
 - Elderly abuse matters, G.L. chapter 19A, section 20(a)
 - Matters involving:
 - (1) Authority to admit/commit as mentally ill, alcoholic or mentally retarded, G.L. chapter 201, sections 6 & 6A; G.L. chapter 123, sections 5 & 35
 - (2) Authority to administer anti-psychotic medications or other treatment, Rogers v. Commr., Dept. Mental Health, 390 Mass. 489 (1983)
 - (3) Authority to withhold or terminate treatment, In re Earle Spring, 380 Mass. 629 (1980); Supt. of Belchertown State School v. Saikewicz, 373 Mass. 728 (1977)
 - (4) Adoptions where Commonwealth or licensed social service agency standing in its stead is petitioning, G.L. chapter 210, section 3 where Dept. Public Welfare v. J.K.B., 379 Mass. 1 (1979) applies
 - (5) Care and protection matters, where Commonwealth is moving for appointment of guardian for the child, G.L. chapter 119, sections 23C & 29
 - (6) Guardianships of minors where Commonwealth or agency is petitioning, G.L. chapter 201, sections 5 & 14
 - (7) Foster care review hearings, G.L. chapter 119, section 29B
- e. In the Superior Court Department:
 - Criminal matters in which there is a possibility of incarceration

- Petitions to declare and commit or release sexually dangerous persons (SDPs), G.L. chapter 123A, sections 5, 9
- Petitions to commit or release those committed as mentally ill, G.L. chapter 123, sections 5, 9
- Petitions seeking abortions, G.L. chapter 112, section 12S

f. In the Appeals Court:

- Direct appeals from an order or judgment in any proceeding in which the appointment of counsel is required in the Trial Court
- Appeals from denial of certain Mass.R.Crim.P. 30 motions

g. In the Supreme Judicial Court:

- Requests for direct appellate review of an order or judgment in any proceeding in which the appointment of counsel is required in the Trial Court
- Requests for further appellate review of an order or judgment in any proceeding in which the appointment of counsel is required in the Trial Court
- Petitions for writ of general superintendence or other extraordinary remedy in connection with an order or judgment in any proceeding in which the appointment of counsel is required in the Trial Court

2. Defining "indigency" and "indigent but able to contribute"--fulfilling one of its statutory mandates -- The Committee defined "indigency" and proposed uniform standards and procedures for the determination by the courts that (1) a person is indigent and unable to obtain counsel, and (2) is indigent but able to pay a reduced fee. These definitions and recommended procedures are now before the Supreme Judicial Court for review.
3. Redrafting of Court Rules -- The enactment of Chapter 673 of the Acts of 1983 resulted in many of the rules of court governing the appointment of counsel being inconsistent with the new statute. The Committee undertook a year-long project to redraft all court rules affected by the statute. The changes affected the rules of the Supreme Judicial Court, the Appeals Court, and nearly every division of the Trial Court. The proposed revised rules are now before the Supreme Judicial Court for review.

B. New Personnel Procedures

1. Recruitment and Hiring Policies -- The Committee immediately undertook to establish new recruitment and hiring policies for its full-time staff. In doing so it expressed its philosophy to seek out and hire the highest quality staff person while at the same time undertaking major affirmative action initiatives. Among the requirements adopted by the Committee were public advertisement of positions, law school interviewing, special efforts to attract minority candidates, and involvement of the full-time staff in the interviewing process. The results of the first year showed that major strides had been made. The full-time staff, which at the time of the Committee takeover consisted of 15% minority, at the end of a year had increased to 20% minority. Of the twenty-five attorneys hired during the year, five, or 20%, were minority persons. In addition, 68% of the new legal staff were female. Of the nine persons hired for the non-legal staff, five, or 55.5%, were minority persons. While the Committee is satisfied that its initial steps in this area have been productive, it recognizes the necessity of increased efforts in recruitment of staff.
2. New Vacation and Leave Policy -- The Committee also acted to establish a more attractive benefits package for the full-time staff. It reorganized the vacation policy with increased vacation increments for longer-term employees. It created the possibility of leave of absence to allow staff to pursue alternative interests. It expanded the concepts of maternity, paternity, and sick leave to cover family emergencies and other similar types of problems, and it created the concept of personal leave days to reduce the misuse of sick time and other unauthorized uses of time. Behind the Committee's action in this area was the need to make full-time staff positions more attractive, and thus make the positions more competitive.

C. Leadership on Criminal Justice Policy Issues

1. Legislative Priorities -- From its inception, the Committee decided to take an active posture on legislation affecting the criminal justice system. It singled out several major pieces of legislation to which substantial staff resources were allocated:
 - a. The presumptive sentencing legislation -- This proposed legislation, which would establish presumptive sentencing ranges for most crimes against the person, also contained a major recodification of these crimes. The Committee took a position against enactment of the legislation as proposed, after hearing from both its staff and from the bill's proponents. It instructed the staff to

work to modify and amend the proposed legislation. Committee staff prepared an alternative recodification section, met with proponents and legislators, obtained many changes in the legislation, and ultimately saw the proposal pass the House of Representatives but not be considered in the state Senate during the 1984-1985 legislative year. Since the proposal has been resubmitted this year, many more changes have been made. Committee staff are continuing their efforts to present the Committee's position at all stages of the legislative process, as well as at bar associations and other interested group meetings. Staff members making extraordinary contributions in this area were William J. Leahy and Martin R. Rosenthal.

b. A second major effort by the Committee is in opposition to the proposal to change the existing trial de novo system in the state district courts. This proposal, sponsored by the Chief Justice of the District Court Department, was determined by the Committee to be deleterious to the interests of Committee clients. Committee staff represented that the legislation will ruin a system that now screens out over 90% of the cases, while offering protections for accused persons which are not provided for in the proposed changes. This legislation is currently being reviewed by a legislative committee.

c. Capital Punishment -- The Committee voted to oppose legislation which would reinstate capital punishment in Massachusetts. Prior legislation enacted in 1982, reinstating capital punishment, was declared unconstitutional by the Massachusetts Supreme Judicial Court (the Committee had submitted an amicus curiae brief on that case).

d. Individual Voir Dire of Jurors -- The Committee had its staff prepare legislation to provide for a clear definition of individual voir dire of jurors. This legislation is in Committee at this time.

2. Bar Association Involvement -- Forsaking its past history of little involvement in bar association policy development, the Committee members have encouraged staff involvement in bar association committees on important criminal justice issues. Thus, senior administrative staff have served on a variety of committees. Among those are the Massachusetts Bar Association's Special Committee on Sentencing, Trial de Novo Task Force, Appellate Bench-Bar Committee, and the Delivery of Legal Services Section. Boston Bar Association activities included membership on the Council, and on the Administration of Justice and Criminal Law Sections. Other staff have participated in county bar activities as well.

3. Other Committees and Organizations -- Staff members also served as members of various other committees such as the Governor's Anti-Crime Council, the Criminal History Systems Board, the Governor's Special Commission on Correction Alternatives, Civil Liberties Union Board of Directors, the Civil Rights Coalition and the Massachusetts Association of Criminal Defense Lawyers.

D. Establishment of Standards for Counsel

One of the major responsibilities under the enabling legislation is the establishment of performance standards for counsel who carry out the Committee's mandate. During the first year the Committee established standards in the following areas:

1. Appellate Cases -- Performance standards for both full-time defender appellate attorneys as well as private counsel accepting appointment in appellate cases were established. Among the standards are time requirements for review of transcripts, mandatory visits to incarcerated clients, review of all legal issues with clients, explanation of rights under Commonwealth v. Moffett (submission of arguments to court not recommended by attorney); filing of motions by the attorney; submission of brief and conduct of oral arguments, and handling of further appellate relief actions by the attorney. In addition, full-time appellate defenders are governed by minimum numbers of briefs submitted and assignment of cases within the Appeals Unit, so as to avoid overload.
2. Civil Commitment Cases -- Performance standards were established for cases involving civil commitments pursuant to G.L. chapter 123, section 5. They require the attorney to act as an advocate and set out fifteen requirements including meetings with the client, determination of alternatives to commitment; analysis of possibilities of independent psychiatric evaluation, investigation of the facts, interviewing potential witnesses; analysis of procedural and substantive legal defenses, attempts at negotiated settlement; conduct of hearing, and handling of right to appeal adverse findings.
3. "Rogers" Cases -- Performance standards were developed for cases of guardianship for a person for whom authority is being requested to administer extraordinary medical treatment. These standards are similar to those described above in the civil commitment areas.

4. Murder Cases -- Qualification standards for attorneys handling murder cases were established. These included minimum number of serious criminal jury trials, experience with expert witnesses; criminal procedure experience and other requirements to insure that only highly qualified attorneys are appointed.
5. Bi-lingual Representation -- The Committee sent out to the courts a policy statement calling for the judges: (1) to determine when a defendant does not speak English as his/her first language, and (2) to appoint an attorney who speaks the defendant's first language to represent him/her, where possible.

E. New Procedures for Appointment of Counsel

1. Murder Cases -- Prior to July 1, 1984, attorneys who were appointed to handle murder cases were appointed under the provisions of Rule 53 of the Superior Court. This rule provided that the judge make an appointment from a list of attorneys approved by the Superior Court judges. While the judges carefully selected the attorneys on the list, there were no objective standards. Furthermore, since it was left to the discretion of the individual judge making the appointment as to whom to appoint, no comprehensive system for appointment was developed. With the Committee taking responsibility, it set qualification standards which included requirements of experience in serious criminal jury trials and in examining and cross-examining expert witnesses. The Chief Counsel, who is responsible for all murder appointments, set up a list of qualified attorneys and an order of appointment by county. Finally, the Committee recognized \$50 per hour as rate for compensation in murder cases. Since instituting this system, the Chief Counsel has approved 90 attorneys to handle murder cases, and 68 defendants have had counsel appointed under this new system. In addition, the Committee established an on-call system of the full-time public defenders to respond to requests for counsel prior to arraignment by persons accused of murder who could not afford counsel. This is the first time counsel has been systematically available to the indigent prior to arraignment in Massachusetts.
2. Appellate Cases -- While the new legislation calls for all appellate cases to be assigned to the Public Counsel Division, this has proven impractical and would result in severe case overload of the Appeals Unit staff if the mandate were followed. The Committee thus not only instituted a caseload standard on the Public Counsel Division Appeals staff, but also established a list of qualified attorneys to accept the appointments of the conflict and overload cases. These attorneys, all of whom have had prior appellate experience, are also

required to meet the appellate performance standards for private counsel. At the time of this report, 115 attorneys have been approved for appellate cases, and 127 appellate cases have been assigned to private counsel by the Committee.

F. Rates of Compensation

1. Public Hearings -- In order to obtain first-hand reports from the attorneys handling the cases, as well as from others associated with the courts, the Committee held public hearings throughout the state during the months of March through May. These five hearings, held in Peabody (Essex County); Boston (Suffolk County); Springfield (Hampden County); Plymouth (Plymouth County), and Worcester (Worcester County), saw many testify before the Committee members on a variety of issues. While the issue of compensation was clearly uppermost in the minds of the bar, there was also criticism over the slowness of payment, the requirements of multiple forms, the lack of training opportunities, and the poor quality control. Bar advocate attorneys justifiably pointed out that their \$150 per day rate often translated into less than \$10 per hour, which resulted in quality counsel refusing to participate. It was further suggested that taking a case to trial was a "losing proposition." Private attorneys also complained that while the hourly rate was a better solution, it too had many drawbacks and pointed out that often overhead could not even be covered by the current hourly rate of \$25/\$35 per hour.
2. Standardization of Compensation System -- While the Committee is evaluating the existing compensation system, it has recognized that several interim steps could be taken to offer the Private Counsel Division appointees some incentive to provide effective representation. Among these steps were to standardize the bar advocate program to \$150 per day, to add an hourly rate for actual trials in the jury of six in the district courts, to eliminate payment for continuances, and to standardize the rate for murder cases at \$50 per hour.
3. Grievance Procedure -- The Committee established a grievance procedure by which attorneys could appeal bill reductions made by judges. Thus, for the first time, the final decision on compensation for cases will not be made by the judiciary.

G. Reorganization of Administration

1. Establishment of a Management Team -- The Chief Counsel, who is responsible for the day-to-day management of the Committee operations and staff, established a management team responsible for the agency (see Appendix D). In addition to the Chief

Counsel, the team consists of the Deputy Chief Counsel of the Public Counsel Division, responsible for all Public Counsel Division operations and staff; the Deputy Chief Counsel of the Private Counsel Division, responsible for the bar advocate and private counsel appointments, as well as for the processing of all invoices and payments for services provided by private counsel; the General Counsel, who handles all matters not falling directly within the two divisions, all legislative activities, all automated data processing and general policy matters; the Director of Administration, responsible for administrative support including accounting, budgeting, personnel, recordkeeping, payroll, purchasing, and real and personal property management; and the Director of Training, responsible for the development and supervision of training programs and materials as well as for policy research and development. This management team met regularly to analyze responsibilities, assign tasks, and conduct evaluation of performance. The concept proved highly successful in enhancing the management of the agency.

2. Utilization of Automated Equipment -- From its inception, the Committee recognized that it must use modern automated data processing equipment to enable the agency to function effectively, to collect the necessary data to evaluate its operations and effectiveness, and to enhance the ability of its staff to produce the highest quality work. It, therefore, immediately began to allocate a portion of the budget to bring in modern technological capabilities.

The first step in automation was an analysis of short- and long-term needs. This was undertaken by General Counsel Richard J. Hayes and Appeals Attorney Richard Zorza. The priorities established were:

- a. to enhance the ability of the Appeals Unit to produce briefs and other materials of high quality through the use of word processing equipment. This was accomplished by purchase of an NBI System 8 CPU with 10 megabytes of storage and 8 ports. The CPU has 5 remote terminals with one high-speed laser printer and one slower letter-quality printer primarily used by administration.
- b. to provide a computer system by which the private counsel appointments and bills could be processed electronically. To accomplish this, the Committee contracted with Keydata Corporation to develop software to be utilized on a Zebra/Pick System manufactured by General Automation Company. The CPU will be a Zebra/Pick 3500, with 128 megabytes of storage.
- c. to establish a data collection system to keep track of all appointments and the results of all cases.

- d. to keep track of cases and other management data necessary to the operation of the Public Counsel Division.
- e. to handle the Committee's accounting, personnel and bookkeeping functions.

III. PRIVATE COUNSEL DIVISION - Nancy Gist, Deputy Chief Counsel

The major portion of the Committee's mandate is to "establish, supervise and maintain a system for the appointment of private counsel...the 'private counsel division.'" The Private Counsel Division is "assigned for all persons accused of crimes entitled to counsel who...must have counsel appointed to them, but who...are not to be represented by the public counsel division" as well as "person(s)...before the Probate and Family Court Department or the Housing Court Department in a criminal contempt proceeding or in such other proceeding in said departments in which a person is entitled to be represented by counsel" and "...such other proceedings as the chief counsel shall determine to be necessary."

The Committee inherited two systems for appointment:

A. Bar Advocate Programs

In all counties except Suffolk and Berkshire, the Trial Court had contracted with county bar association-sponsored bar advocate programs to schedule and compensate private attorneys in all district and some probate and juvenile courts, and in Superior Court where the Massachusetts Defenders Committee or Roxbury Defenders Committee had a conflict. Attorneys were compensated on what was essentially a per diem basis at rates which varied from county to county. The Committee renewed those contracts for its first year of operation and entered into a contract for Berkshire County. A list of the names and addresses of bar advocate programs is as follows:

Barnstable County Bar
Advocates, Inc.
First District Courthouse
Room 403
Barnstable, MA 02630

Berkshire County Bar
Advocates, Inc.
85 East Street
Pittsfield, MA 01201

Boston Bar Association
16 Beacon Street
Boston, MA 02108

Bristol County Bar
Advocates, Inc.
448 County Street
New Bedford, MA 02740

Dukes County Bar Association
Committee to Represent
Indigents, Inc.
Box 186 (Main Street)
Edgartown, MA 02539

Essex County Bar Association
Advocates, Inc.
P.O. Box 510
Manchester, MA 01944

(Continued on next page.)

Franklin County Bar
Association
Advocates, Inc.
55 Federal Street, Suite 310
Greenfield, MA 01301

Hampden County Bar
Advocates, Inc.
50 State Street, Room 137
Springfield, MA 01103

Hampshire County Bar
Advocates, Inc.
Court House
15 Gothic Street
Northampton, MA 01060

Middlesex County Bar
Advocates, Inc.
Court House
Cambridge, MA 02141

Norfolk County Bar
Advocates, Inc.
1354 Hancock Street
Suite 300
Quincy, MA 02169

Pilgrim Advocates, Inc.
47 West Elm Street, Room 308
Brockton, MA 02401

Worcester County Bar
Advocates, Inc.
19 Norwich Street
Worcester, MA 01608

B. Case-By-Case Appointments

In courts not covered by bar advocate programs, private attorneys are appointed on a case-by-case basis by the courts and compensated on an hourly basis. The system of appointment varies from court to court; in some courts, attorneys are appointed on a rotating basis from a list established by the clerk's office or judge; in others, attorneys present in the courtroom are drafted; in others, a list of attorneys in court that day who wish to take appointments is used; and some courts schedule attorneys. These attorneys are compensated at the rate of \$35 per hour for time engaged in evidentiary hearings or trials, and \$25 per hour for other in- and out-of-court time. The rates are set out in Rule 8 of the District and Municipal Courts and Rule 53 of the Superior Court. The Rules also contain other restrictions on compensation. The Committee has proposed to substantially change many of these restrictive provisions. Moreover, it will, on the basis of the Private Counsel Division's experience in fiscal year 1985, the public hearings, and the survey of private attorneys, propose an increase in rates of compensation of private attorneys for fiscal year 1987.

During its first year of operation, the Private Counsel Division:

1. Processed over 20,000 invoices for services from private attorneys -- By February, the Private Counsel Division staff, with strong leadership from Gina Dembowski and Ela Marinella, was well within the statute's maximum 30-day turn-around time and by April, it was sending invoices to the Comptroller for payment two days after receipt at the Committee's office.
2. Standardized contracts with bar advocate programs for the fiscal year beginning July 1, 1985, placing the emphasis on monitoring attorney performance and

vertical representation -- These contracts limit the program's responsibilities to scheduling and compensation of attorneys for the district courts only.

3. Changed the system of compensation for appeals from bench trials to a jury of six for bar advocate attorneys -- In fiscal year 1986, they will receive \$50 for taking the appeal, conferencing and disposition, plus the hourly rate of \$25 per hour for out-of-court time and \$35 per hour for in-court time for empaneling a jury and trying the case.
4. Contracted with the Boston Bar Association to expand its bar advocate program for the Boston Municipal Court into the other district courts in Suffolk County -- (These programs compensate attorneys at Rule 8 rates rather than on a per diem basis.)
5. Negotiated a contract with the National Legal Aid and Defender Association to undertake a study of the bar advocate programs -- The study will provide a comprehensive overview of their operations, an objective assessment of their performance and an analysis of the relationship between quality of services provided and the level of compensation, and will provide a basis for determining the future direction of private-appointed attorney representation in the district courts.
6. Developed a standard billing form for private attorneys which, for the first time, collects not only time and dollar data, but information on charges and dispositions as well -- As a result, the rate of return of invoices for missing information was reduced from almost 30% in December to about 12% at the close of the fiscal year.
7. Required attorneys to submit invoices for services rendered in fiscal year 1985 (even in cases still pending at the close of the fiscal year) by September 1, 1985, which will provide comprehensive data on the number of cases handled and actual cost of services provided in a year -- Once all invoices are submitted and analyzed, it will also be possible to determine cost per case and compare these costs by case-type, court, and form of representation.
8. Compensated private attorneys appointed on a case-by-case basis almost \$5 million.

The following data represents bar advocate activities for fiscal year 1985.

BAR ADVOCATE PROGRAMS

FISCAL YEAR 1985

<u>PROGRAM</u>	<u>ATTORNEY COMPENSATION</u>	<u>CASES*</u>
Barnstable***	\$124,265.00	5,268
Berkshire**	134,800.75	1,511
Bristol***	500,433.75	13,852
Dukes	24,450.00	188
Essex	441,500.00	11,433
Franklin	124,581.52	1,059
Hampden	344,625.00	8,557
Hampshire	98,309.20	2,203
Middlesex	564,975.00	18,483
Norfolk***	359,721.35	7,172
Pilgrim	368,152.97	9,699
Worcester	<u>412,606.25</u>	<u>11,670</u>
	\$3,498,420.79	91,095

* Source of information: bar advocate program administrators.

** Only in operation nine months.

*** Includes compensation for continuances.

NOTE: Boston Bar/Boston Municipal Court program not included.

IV. PUBLIC COUNSEL DIVISION - William J. Leahy, Deputy Chief Counsel

Perhaps the most difficult tasks which confronted the Public Counsel Division (PCD) when it came into existence on July 1, 1984, were (1) to continue and where possible improve the quality of representation provided by the formerly independent Roxbury Defenders Committee and Massachusetts Defenders Committee, after their merger into a single, statewide public defender organization, and (2) to provide pre-service and in-service training as directed by the provisions of Chapter 211D to the public division. Enormous amounts of PCD staff time have been devoted to these areas, resulting in the achievement of a considerable degree of success.

A. Formation of the Division

The joining together of MDC and RDC required considerable effort from both organizations. Initially, Roxbury Defenders Committee board members, attorneys, and staff met with the Committee and the Chief Counsel to clarify responsibilities. Once this was accomplished, Roxbury Defenders Unit (RDU) staff contributed their time and skills to the division by participating in the interviewing of prospective attorney candidates, and the planning and preparation of the statewide conference and basic training program. Moreover, three RDU attorneys accepted transfers to other units within the division. Conversely, three Boston office attorneys transferred to the RDU. By the end of the fiscal year, the Roxbury and Boston Trial Units had entered into a cooperative system for providing court coverage in the First Criminal Session at Suffolk Superior Court, and the RDU was functioning as an integral part of the Public Counsel Division.

B. Implementing the Training Function

The Committee is required to "provide pre-service and in-service training for...salaried public counsel," Chapter 211D, Section 4. The first step toward meeting this goal was to elevate senior PCD trial attorney Martin R. Rosenthal to the position of Training Director. While the training director had no staff and no budget, tremendous progress has been achieved in this area, largely due to the efforts of PCD staff attorneys who volunteered to do this vital work. Thanks to this training planning group, the Public Counsel Division has been able to significantly expand and improve its basic training program which will be offered to newly hired attorneys in September, 1985. The basic training manual is being updated and revised, the session expanded from two to three weeks, a series of outlines for trainers has been prepared, and daily skill exercises covering the gamut of client representation will be offered accompanied by group and individual (video tape) critiques.

Apart from the annual statewide conference, formalized in-service training within the division has been available on a regular basis only to attorneys in the Boston, Cambridge, Roxbury and Lynn offices. Building upon the work done by the Attorney-in-Charge, John C. Prescott, in the Boston office and Senior Trial Attorney Lawrence J. McGuire in the Lynn office, the Public Counsel Division plans to expand these programs to the Springfield and Worcester offices in the near future, and then throughout the division.

Jury trial training for attorneys with less than two-years' experience will be implemented early in 1986. The abundant jury trial experience of senior PCD staff will be utilized to provide this valuable training.

A successful statewide conference for all staff, with a significant training component, was conducted in Natick on May 3, 1985. Seminars for lawyers and investigators were conducted in the areas of search and seizure, early investigation, the trial of child sex abuse cases, the importance and availability of expert assistance in identification cases, and techniques for providing early (pre-arraignment) representation on murder cases. Non-legal staff were shown a film depicting the conduct of a criminal case with expert interpretation by former MDC attorney Judith L. Lindahl, and a talk on prison life by a man recently released after many years of confinement. Both lawyers and non-legal staff benefited from a seminar on stress management conducted by a doctor from McLean Hospital.

In sum, achievements in the training area have been remarkable given the absence of an adequately funded training unit.

C. Leadership Selections

The Middlesex County and Roxbury offices are highly visible and important units within the division. In Roxbury, the office serves the criminal defense needs of a community which at once deserves excellence in representation, and is indignant over crimes committed against its members. Meanwhile, the Cambridge office is the flagship of our operation in the Commonwealth's most populous county, where there is a well-financed and aggressive district attorney's office. Early in 1985, new attorneys-in-charge were installed by the Chief Counsel and the Deputy Chief Counsel of the Public Counsel Division in each office. In Cambridge, they chose a highly respected eleven-year veteran of the MDC and PCD, Geoffrey C. Packard. In Roxbury, after nationwide advertising and a recruitment visit to the Public Defender Service in Washington, D.C., they selected Charles T. Spurlock, whose extensive trial experience included terms with the Middlesex County District Attorney and the United States Attorney. Packard and Spurlock, upon assuming their duties in May, immediately undertook the task of realigning their offices' supervisory structures in order to obtain the best possible representation. They were also, in cooperation with Boston Attorney-in-Charge John Prescott, involved heavily in the final selection stages for new attorneys and the development of the September training program.

Replacement of attorneys-in-charge of the Worcester and Lowell offices was necessitated by the appointments of Attorneys Thomas F. Sullivan and Neil J. Walker to serve as district court judges. In September, 1984, Paul S. Waickowski was selected to head the Worcester office. Waickowski was a trial attorney with twelve-years' experience in the Boston, Cambridge and Worcester offices of MDC who had been Sullivan's chief supervising attorney for several years. In June, 1985, Daniel E. Callahan was chosen as Attorney-in-Charge of the Lowell office in Middlesex County. Callahan's seven years as a public defender include trial attorney duty in the Lynn and Cambridge offices, and a term as Deputy Chief Appellate Attorney.

D. Recruiting

The initial year of the Committee for Public Counsel Services was characterized by a new, aggressive approach to public defender recruiting. Emphasis was placed on the recruitment of experienced professionals and minority attorneys. For the first time in this Commonwealth, a public defender agency participated fully in the fall recruitment season, scheduling full-day interviewing programs at each of the seven in-state law schools. Selected applicants were interviewed further by PCD staff attorneys, then by attorneys-in-charge of regional offices, and ultimately by the Chief and Deputy Chief Counsel. This process led to the hiring of fourteen promising new attorneys who will augment our staff in September.

In addition, overtures were made to selected criminal practitioners of proven ability. This effort resulted in the hiring of former MDC attorney and supervisor, Pamela Hattem, from the Middlesex District Attorney's Office, and Attorney M. Shanara Gilbert from the Public Defender Service in Washington, D.C. Their experience and that of the trial and appellate staffs

should blend nicely with the enormous potential possessed by the graduating law students and novice attorneys who distinguished themselves through the interview process and, in several cases, by the excellence of their work as student attorneys with the Committee for Public Counsel Services.

The emphasis on minority recruiting included letters to the Black Law Students Association and other minority student organizations at each area law school, the establishment of a summer internship program directed primarily at minority law students, participation in the Washington, D.C., area law schools public interest career day in February, preference to minority applicants for law student co-op placements, and a personal written request by the Chief Counsel to all PCD attorneys to pass on the names of qualified and interested minority attorneys. The effort in this area enabled the Committee to hire highly qualified minority attorneys both during fiscal year 1985 and for September, 1985. The Committee hopes for further progress in future years based upon our 1985 summer internship program, which employed twelve students including ten minorities in a variety of trial and appellate settings.

E. Enhancement of Support Services

The provision of investigative and social work support services to clients is one area in which neither MDC nor RDC had distinguished itself in recent years. As of July 1, 1984, the PCD employed a total of nine investigators and one social worker, none of whom received student assistance. The fiscal year 1986 budget request to establish regional resource centers, supervised by professionals and relying on paid student assistance, was not funded by the Legislature.

Notwithstanding this setback, the Committee has taken several steps toward remedying this longstanding deficiency. Social work supervisor, Joseph R. Murphy, was able to obtain the services of two part-time graduate social work students during the past academic year. Their contribution was so productive that Mr. Murphy will expand his student program to three or four students this year. He has also obtained the services of an experienced part-time volunteer. Thus, the Cambridge and Roxbury offices will have regular access to a social worker, requests for assistance from other PCD offices will receive a more effective response, and Mr. Murphy will be able to augment his incipient program of providing services to private division clients.

The limited number of investigators has traditionally meant that cases are investigated long after their occurrence--usually on the eve of Superior Court trial. By this time, memories have invariably faded and the evidentiary trail is usually cold. Thorough investigation of every case soon after it is received is obviously preferable. To do this, Committee staff have studied the system used by the Public Defender Service in Washington, D.C., for a decade. The Public Defender Service utilizes college student volunteers who are trained by their investigators and then assigned to one or more attorneys. Deputy Chief Counsel Leahy visited the Public Defender Service in February, a Public Defender Service investigator lectured on the program at the statewide conference in May, and the program has been discussed with PCD attorneys-in-charge and investigators. In July, Leahy notified Massachusetts colleges and universities of the Committee's desire to implement this program, and thus far several enthusiastic responses have been received. The Committee plans to begin small-scale implementation of the program in September.

F. Appeals Unit

During this fiscal year, the Appeals Unit performed with the excellence which has characterized its work throughout the tenure of Chief Appellate Attorney Brownlow M. Speer. The quality of its briefs and appellate advocacy bears daily testimony of the Committee's guiding principle that the indigent defendant receives representation every bit as thorough and effective as the wealthy one.

Attempting to reverse a criminal conviction is an uphill fight, and the Appeals Unit loses far more cases than it wins. Nevertheless, in the course of striving to achieve relief for each individual client on appeal, the Unit has the satisfaction of being able to bring about reforms in and advancements of the criminal law which are of potential benefit to all of the Committee's clients. The Unit's major case law achievements in the past fiscal year will be found in Commonwealth v. Maguire, 392 Mass. 466 (judge's exercise of discretion to allow use of defendant's prior convictions for impeachment purposes is subject to appellate review); Commonwealth v. Jewett, 392 Mass. 558 (defendant's right to show misidentification of himself as perpetrator of crime charged by introduction of evidence of another individual's commission of similar crime); Commonwealth v. Donovan, 392 Mass. 647 (inadmissibility of fruits of post-complaint uncounselled identification procedure); Commonwealth v. Pietrass, 392 Mass. 892 (warrantless entry of dwelling by police to arrest defendant illegal absent exigent circumstances); Commonwealth v. Dellamano, 393 Mass. 132 (defendant cannot be convicted of receiving stolen property without proof of his actual personal knowledge that property was stolen); Commonwealth v. Riveiro, 393 Mass. 224 (voir dire on admissibility of defendant's statement must be held out of presence of jury); Commonwealth v. Crowley, 393 Mass. 393 (Commonwealth bears burden of proving defendant's competency to stand trial by preponderance of the evidence); Commonwealth v. McDermott, 393 Mass. 451 (in first degree murder case, judge must instruct jury that defendant's intoxication may mitigate elements both of "deliberate premeditation" and "extreme atrocity or cruelty"); Commonwealth v. Elliot, 393 Mass. 824 (defendant's right to show complaining witness's intent to commence civil action); Commonwealth v. Nawn, 394 Mass. 1 (defendant's right to hearing on amount of restitution to be ordered on disposition); Commonwealth v. Nieves, 394 Mass. 355 (judge's charge must not create presumption of "malice" arising from proof of defendant's use of deadly weapon); Commonwealth v. Ford, 394 Mass. 421 (Article 14 exclusionary rule); Commonwealth v. Matos, 394 Mass. 563 (defendant's right to cautionary instructions on "consciousness of guilt" evidence); Commonwealth v. Cancel, 394 Mass. 567 (impropriety of prosecutorial argument on defendant's failure to call alibi witnesses absent evidence of their availability to defendant); Commonwealth v. Henson, 394 Mass. 584 (right of defendant to show prosecution witness's possible bias arising from pending criminal charge; charge of "assault with intent to murder" requires proof of actual intent to kill; defendant's intoxication may negate "specific intent" element); Commonwealth v. Susi, 394 Mass. 784 (defendant's right to challenge for cause juror physically incapable of viewing evidence); Commonwealth v. Boone, 394 Mass. 851 (charge of "escape" cannot be sustained without proof of defendant's actual or constructive custody at penal institution); Commonwealth v. Dixon, 395 Mass. 149 (judge's duty to conduct post-verdict inquiry upon defendant's showing of extrinsic communication to deliberating juror); Commonwealth v.

Marcotte, 18 Mass. App. Ct. 391 (charge of "armed robbery" requires proof of defendant's intent to put victim in fear); Commonwealth v. Barber, 18 Mass. App. Ct. 460, aff'd, 394 Mass. 1013 (defendant's right to jury instruction on self-defense in "mutual combat" situation); Commonwealth v. Ford, 18 Mass. App. Ct. 556 (judge cannot take disputed issue of fact from jury); Commonwealth v. Dreyer, 18 Mass. App. Ct. 562 (judge must charge on lesser included offenses warranted by the evidence); Commonwealth v. Burno, 18 Mass. App. Ct. 796 (defendant's conviction of assault on theory of "wanton and reckless" conduct requires proof of physical injury to victim); Commonwealth v. Marrero, 19 Mass. App. Ct. 921 (defendant's footwear alleged as "dangerous weapon" must be shown to have capacity greater than unshod foot to inflict injury); Commonwealth v. Martin, 19 Mass. App. Ct. 117 (defendant's right to introduce and argue evidence of his "consciousness of innocence"); Commonwealth v. Moore, 20 Mass. App. Ct. 1 (Rule 36 motion to dismiss); Commonwealth v. Rosenfield, 20 Mass. App. Ct. 125 (Commonwealth's burden to produce record showing error in judge's grant of defendant's motion to dismiss); Commonwealth v. Hill, 20 Mass. App. Ct. 130 (defendant's stipulation of guilt in jury-waived trial requires inquiry by judge as to its voluntariness); Commonwealth v. Thayer, 20 Mass. App. Ct. 234 (defendant's right to introduce evidence of conduct by complaining witness inconsistent with witness's accusation); Commonwealth v. Ennis, 20 Mass. App. Ct. 263 (charge of "assault with intent to murder" requires proof of defendant's specific intent to kill).

Perhaps the most satisfying development, apart from the successes in direct representation, was seeing the arguments expressed by Attorneys Patricia A. O'Neill and Richard Zorza in the Committee's amicus brief in the death penalty case bear fruit, as the Supreme Judicial Court once again declared it unconstitutional in Commonwealth v. Colon-Cruz, 393 Mass. 150 (1984). Another highlight was the Appeals Unit's involvement in the triad of cases establishing a stricter standard of protection against unwarranted searches and seizures under the state constitution than has recently been imposed by the United States Supreme Court. Maureen B. Brodoff represented the defendant in Commonwealth v. Ford, 394 Mass. 421 (1985); and, together with Speer, she submitted amicus briefs in the companion cases of Commonwealth v. Upton, 394 Mass. 363 and Commonwealth v. Sheppard, 394 Mass. 381.

At the outset of the year, the enactment of Chapter 211D had bestowed on the Unit the responsibility for "all" indigent appeals and related post-conviction proceedings. This was not possible given the staff of eleven attorneys. Therefore, Mr. Speer and Chief Counsel Rosenfeld implemented a system whereby, once the Unit reached a level of substantial overload of cases entered in the appellate courts, Mr. Speer would request Mr. Rosenfeld to assign the cases to private attorneys who had met the standards promulgated for receiving such appointments. This policy has enabled the Appeals Unit to avoid case overload and continue the high quality of its representation.

In May, 1985, the Unit added a twelfth attorney as William R. Hill, Jr., former attorney-in-charge of the Roxbury Defenders Unit, joined its ranks. In September, three additional attorneys chosen from an impressive group of applicants will further augment the Unit.

During this year, the Unit accepted all cases (conflict excepted) where the defendant had been represented by a Public Counsel Division attorney at trial, and additional cases when the caseload level permitted. There were 88 of the former and 25 of the latter. The Unit produced 96 full briefs, and

related reply briefs, applications for further appellate review or rehearing, motions for new trial or petitions for a writ of habeas corpus. The attorneys also provide assistance to trial attorneys from both public and private divisions, and consultation with private division attorneys representing CPCS clients on appeal. At the end of the fiscal year, the Unit represented 135 clients in various stages of the appellate process, while the cases of 47 additional clients were awaiting entry in the appellate courts.

A significant achievement this year was the resumption of the monthly casenotes, which had been published by the Unit from 1980 to 1982 and had been of considerable service to trial attorneys. The casenotes help trial lawyers stay abreast of developments in the law, and direct their attention to burgeoning issues. They are distributed not only to public division attorneys, but also to the bar advocate programs in each county. Their return is keenly appreciated by the trial lawyers.

G. The Trial Unit

As indicated earlier in this report, the first year under CPCS was an eventful one for the Trial Unit of the PCD. First, there was a change of attorney-in-charge in four of the ten regional offices--Cambridge, Lowell, Roxbury and Worcester. Second, an intensive commitment of time was required of many staff attorneys in fulfillment of the training responsibility which enactment of Chapter 211D had thrust upon the organization. The yearly statistical summary shows that the Trial Unit was able to meet these increased duties while maintaining its customary expertise in the handling of criminal cases for our clients.

As of July 1, 1984, the PCD Trial Unit, with the exception of the RDU*, had pending a total of 3,844 cases in District Court, 201 in the District Court Jury-of-Six Session, 2,054 in Superior Court, 253 in Juvenile Court, and 69 in the Juvenile Court Appellate Division; for an overall total of 6,421 criminal cases. During the fiscal year the Unit was assigned 10,555 cases in District Court, 745 in the Jury-of-Six Session, 2,859 in the Superior Court, 296 in the Juvenile Court, and 104 in the Juvenile Court Appellate Division. In all, 14,559 cases were received by the Trial Unit. During fiscal year 1985, the Trial Unit disposed of 10,355 District Court cases, including 966 probable cause hearings. Two hundred and twenty defendants exercised their right to a first-instance jury trial, while 462 appealed their bench trial convictions for a trial de novo in the jury session. Most, however, did not pursue their appeals to an ultimate jury verdict: there were 57 jury trials (and 15 jury-waived trials) out of 752 total dispositions.

In the Superior Court, the first noteworthy statistic is that over half (1,498 of 2,859) the cases assigned to the PCD were non-vertical; indicating that the vertical representation envisaged by Chapter 211D is at present substantially unfulfilled. Of the 2,994 cases disposed of by PCD in the

* RDU did not begin to operate under PCD statistical norms until January, 1985. Except where indicated, PCD Trial Unit statistics do not include cases handled by RDU, which will have fully implemented the PCD statistical system as of September, 1985.

Superior Court, 207* were jury trials and an additional 50 were jury-waived trials. While the fiscal year statistics do not reveal a won-loss-split verdict record for jury trials, a separate study of calendar year 1984 statistics showed an acquittal rate just over 40% statewide. Approximately another 10% were split verdicts, and the remaining half were convictions. Finally, there were 35 appeals from the Superior Court to the appellate courts on issues of law during the fiscal year. From January to June, 1985, RDU received 436 cases, all but 10 in the District Court, where 144 cases reached a final disposition. The Unit also disposed of 33 cases in the Superior Court and 2 in the Jury-of-Six Session. RDU attorneys conducted 16 jury trials during this period.

V. ADMINISTRATION DIVISION - Joan G. Paino, Director

The Administration Division, which is organized under the supervision of the Director of Administration, assisted by a staff of six, provides administrative support for the agency. It is comprised of the Accounting, Budgeting, Personnel and Purchasing Units and includes the procurement of office space, the management of agency property and the coordination of administrative and clerical services.

Highlights of the Division's major activities of the past year are outlined below.

A. Organization of New Agency

At the outset, its attention was focused on the transfer of personnel and resources and conversion of records of the Massachusetts Defenders Committee and the Roxbury Defenders Committee. Administrative systems and procedures were established to ensure their continued and uninterrupted operations. At the same time, its attention was directed towards the management of funds for private counsel services by participating in the development of systems and procedures for the payment of these services.

B. Fiscal Management

One of its first tasks was to develop a spending plan for the 1985 fiscal year appropriation and to coordinate the preparation of the 1986 fiscal year budget. The Committee's first budget request totalled \$19,613,634 and represented an attempt to fulfill the agency's statutory mandates. (The Legislature appropriated \$15,872,588 and approved twenty-four new positions.)

* It is likely that this figure and the figure indicating the number of six-person jury trials, significantly understate the actual number of jury trials conducted by PCD. A calendar year 1984 survey taken in January, 1985, showed that a total of 365 jury cases were tried during 1984. Steps will be taken to eliminate this discrepancy for the future.

The primary appropriation for the 1985 fiscal year was \$14,330,711 which was supplemented by \$1,200,000, bringing the total appropriation for the year to \$15,530,711. By means of its financial management reports--the Budget Variance Analysis--which provide management with the capability of monitoring and reporting variances in the operating budget on a routine basis, a major deficiency was projected and an Additional Budget Request was submitted to the Budget Bureau before funds were depleted.

A request to designate the appropriation account as a PAC account (Prior Appropriation Continued) was granted and enacted by the Legislature. As a result, any unexpended 1985 funds are reappropriated for use during the 1986 fiscal year and are available to pay for any prior year expenses (1985) received for payment during the course of another fiscal year. The establishment of this account should virtually eliminate any delay in the payment of a prior year obligation. Presented herein is the 1985 fiscal year financial report which reflects by subsidiary the appropriation versus expenditures (see Appendix E). This is an interim report, since all invoices for services rendered by private attorneys have not been submitted to date.

C. Property Management

New leases were negotiated for two branch offices--Brockton and New Bedford.

A major effort was undertaken to replace obsolete equipment and to upgrade other equipment with more advanced technology. Purchases included electronic typewriters; 35 millimeter cameras for investigative purposes; mail-processing equipment--time/date machine, automatic letter opener, electronic scale and postage meter with sealer; calculators; tables; chairs; filing cabinets; bookcases and water coolers.

D. Administrative and Clerical Services

In response to the Committee's affirmative action policy, recruitment efforts resulted in a 70% increase (from 7 to 12) in the number of minority employees on the administrative and clerical staff statewide.

To cope with the dimension of the past year's workload, temporary help resources were utilized to augment understaffed areas of operation--particularly in the Administration Division. Not only were temporary help agencies employed, but also work-study programs of local academic institutions.

VI. GOALS FOR FISCAL YEAR 1986

A. Establishing Systems for the Appointment of Counsel in all Cases

As was mentioned earlier, one of the most significant changes wrought by the new legislation was placing the responsibility for appointment of counsel with the Committee instead of the judges. So far, the Committee has actually taken over this responsibility only in murder cases and appellate

cases. During the next year, the Committee will work toward the establishment of systems so that it assigns counsel in all cases.

B. Insuring Fair and Adequate Compensation for the Private Bar

Although the Committee has not collected complete data, it is able to come to some conclusions about the private bar programs based upon its analysis of existing data, its observations in the courts, and the testimony it received in the public hearings. What is clear is that attorneys accepting appointments are grossly underpaid. Many attorneys work for \$10-\$15 per hour or less. Even those who receive \$25/\$35 per hour do not receive enough compensation to meet their overhead. The rates of compensation are an insult to the bar.

Even more important, however, is that the compensation is so low that attorneys who take appointments are not only not compensated for making an effort on a case, they are financially punished for doing so. The result is that too few investigations are undertaken, too little research on the law is done, too many cases are disposed of by admission or guilty plea, and too few cases are appealed to the jury of six for trial by jury.

The goal of the Committee for fiscal year 1986 is threefold. First, the Committee will make every effort to make the system of compensation to attorneys a fair and adequate one. Second, the Committee will endeavor to insure that attorneys properly prepare their cases. Third, the Committee will set up systems which are as economical as possible.

While the establishment of such systems may well be expensive, it is necessary to achieve the goal of providing an effective defense for the indigent.

C. Development and Conduct of Training Programs

If the quality of representation is to be improved, in addition to increased compensation, it will also be necessary to offer training programs for the wide variety of cases for which the Committee is responsible. Thus, during the next year, the Committee will expend extensive resources to develop and conduct training programs in the following areas:

1. Advanced training for the public and private bar in criminal cases
2. Jury trial training for the public and private bar
3. Juvenile training for the public and private divisions
4. Mental health case training for the private bar
5. Improved basic training for the public division
6. Development of in-house video tape training in all public offices

7. Development of combined training programs for public and private division attorneys

D. Establishment of Standards of Performance for Attorneys

The Committee has established performance standards in selected areas--appellate cases, civil commitment cases, and guardianship cases--but it must still do so in many other areas--particularly juvenile cases and criminal cases. During the next year, the establishment of standards in these two types of cases will be undertaken.

E. Establishment of Automated Bill Processing and Data Collection Systems

During the past year, the Committee has set the foundations for the electronic processing of appointments and payment of counsel and for collection of data about the cases for which the Committee is responsible both in the Public and Private Counsel Divisions. This year should see these systems in operation, as well as a testing, in three counties, of a case management system for the Public Counsel Division.

F. Improvement of the Ratio of Support Service to Trial Attorneys in the Public Division and to Provide Support Service to the Private Division

The Committee has nine investigators serving its entire Public Counsel Division trial staff, which is a ratio of about one investigator to each ten trial attorneys. In addition, only one social service resource person serves the entire Trial Unit. Additional staff, either full time or student volunteer, must be added to insure that cases are adequately prepared. Further, these same resources must be made available to the private attorneys accepting Committee appointments. To maximize the use of limited resources, the Committee will attempt to establish one or two model programs, in counties outside of the Boston area, so that support resources, such as investigators, summons servers, social services and polygraph, are available to both public and private attorneys.

APPENDICES

THE COMMONWEALTH OF MASSACHUSETTS
ADVANCE COPY 1983 ACTS AND RESOLVES
MICHAEL JOSEPH CONNOLLY, SECRETARY OF STATE

Chap. 673. TO ESTABLISH A COMMITTEE FOR PUBLIC
 COUNSEL SERVICES

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to immediately establish a committee for public counsel services, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public safety and convenience. _____

Be it enacted, etc., as follows:

SECTION 1. The General Laws are hereby amended by inserting after chapter 211C the following chapter:-

CHAPTER 211D.

Section 1. There shall be a committee for public counsel services, hereinafter referred to as the committee, to plan, oversee, and coordinate the delivery of criminal and certain noncriminal legal services by all salaried public counsel, bar advocate and other assigned counsel programs, and private attorneys serving on a per case basis. The committee shall consist of fifteen persons to be appointed for a term of three years by the justices of the supreme judicial court. Said court shall request and give appropriate consideration to nominees for the fifteen positions from the Massachusetts Bar Association, county bar associations, the Boston Bar Association, and other appropriate bar groups including, but not limited to, the Massachusetts Black Lawyers' Association, Women's Bar Association, and the Massachusetts Association of Women Lawyers. Each member of the committee shall serve until his successor in office has been appointed and qualified. Vacancies shall be filled by the justices of the supreme judicial court by appointment to an unexpired term. Members of the committee may be removed by the justices of the supreme judicial court. No member of the committee shall receive any compensation for his services, but each member shall be reimbursed for actual expenses incurred in attending the committee meetings.

The provisions of chapter two hundred and sixty-eight A shall apply to all members, officers and employees of the committee, except that the committee may provide representation or enter into a contract pursuant to the provisions of sections three or six although a member of the committee may have an interest or involvement in any such matter; provided, however, that such interest and involvement is disclosed in advance to the other members of the committee and recorded in the minutes of the committee; and provided, further, that no member having an interest or involvement in any contract under section three may

participate in any particular matter, as defined in section one of chapter two hundred and sixty-eight A, relating to such contract.

Section 2. The committee for public counsel shall establish a definition of "indigency" for the purposes of this chapter and uniform standards and procedures for the determination by the courts of the commonwealth that (1) a person is indigent and is unable to obtain counsel or (2) said indigent person has the ability to pay a reduced fee for the appointment of counsel. Said definition and standards, and any amendments thereto, shall be subject to the approval of the supreme judicial court and shall be used by the courts of the commonwealth in determining assignment of cases to the committee pursuant to section five. In the formulation of said definition, standards, and procedures, the committee shall consider the reporting system operated by the commissioner of revenue for the purpose of verifying financial eligibility of participants in state or federally funded programs, and its potential applicability to the provision of legal services for indigent defendants. Payment of any reduced fee by an indigent person for the appointment of counsel shall be made to the probation department of the appointing court, and shall be forwarded to the state treasurer who shall deposit such in the general fund.

SECTION 2. Chapter 211D of the General Laws, inserted by section 2 of this act, is hereby amended by adding the following thirteen sections:-

Section 3. Said committee may accept gifts, grants or contributions from any source, whether public or private, and may enter into contracts to provide or receive services with any federal, state, county or municipal entity, with any group or individual, whether profit or nonprofit, or with any nonprofit or voluntary charitable group, corporation, association or organization, including any bar association or bar advocate group.

Section 4. Said committee shall adopt such rules and regulations as may be necessary for the conduct of its affairs and may from time to time amend or revise the same. The committee shall prepare an annual report which shall be a public document. The committee shall establish standards and guidelines for the training, qualification and removal of counsel in the public and private counsel divisions who accept its appointments, and shall provide pre-service and in-service training for both private counsel who accept assignments and salaried public counsel. The committee may establish a rotating appointment mechanism that will encourage open access among attorneys participating within the private counsel division.

Section 5. Said committee shall establish, supervise and maintain a system for the appointment or assignment of counsel at any stage of a proceeding, either criminal or noncriminal in nature, provided, however, that the laws of the commonwealth or the rules of the supreme judicial court require that a person in such proceeding be represented by counsel; and, provided further, that such person is unable to obtain counsel by reason of his indigency. The committee may also establish a system for the provision of counsel in any pre-arraignment procedure. A

justice or associate justice shall assign a case to the committee, as hereafter provided, after receiving from the probation officer a written report containing the probation officer's opinion as to the defendant's ability to pay for counsel, based on the standards and procedures provided for in section two.

Section 6. In carrying out its duties as prescribed in section five, the committee shall:

(a) Utilize its staff of attorneys, which shall be known hereafter as the "public counsel division". Said division shall include a unit to be known as the Roxbury defenders unit, which shall represent clients as assigned pursuant to this chapter in the Roxbury division of the district court department. Said division shall be assigned to represent indigent defendants in all criminal cases, except that:

(i) said division shall not be assigned to represent more than one defendant in any matter before any court on the same case or arising out of the same incident;

(ii) said division shall not be assigned to represent a defendant in any case in which there is a conflict of interest with any of its clients;

(iii) said division shall not be assigned to a case where a person is before the probate and family court department or the housing court department for criminal contempt or in such other proceeding in said departments in which such person is entitled to be represented by counsel;

(iv) said division shall not be assigned to represent any child alleged to be delinquent, except in such cases which may result in transfer hearings under section sixty-one of chapter one hundred and nineteen, and except in the Boston and Bristol county divisions of the juvenile court department or in the Roxbury division of the district court department;

(v) said division shall not be assigned to represent any person charged with a misdemeanor unless said misdemeanor is in conjunction with a felony charge for which said division has been assigned.

(b) Establish, supervise, and maintain a system for the appointment of private counsel, hereafter called the "private counsel division". The committee shall give preference to providing such counsel by entering into contractual agreements with any state, county or local bar association or voluntary charitable group, corporation or association, including bar advocate groups. Said committee may also contract with such other organized groups of attorneys as may be formed to afford representation to indigent defendants and may appoint and compensate private attorneys, on a case-by-case basis, as counsel for indigents entitled to representation. Neither individuals nor members nor participants in any group, corporation or association with whom the committee may contract under this paragraph shall be considered to be or have any rights as state employees.

(i) Said division shall be assigned for all persons accused of crimes entitled to counsel who, through their inability to pay for counsel, must have counsel appointed to them, but who, pursuant to the provisions of subparagraph (a) of this section are not to be represented by the public counsel division.

(ii) Said division shall be assigned to represent a person who is before the probate and family court department or the housing court department in a criminal contempt proceeding or in such other proceeding in said departments in which a person is entitled to be represented by counsel.

(iii) Said division shall also be assigned to represent persons in such other proceedings as the chief counsel shall determine to be necessary.

Section 7. Said divisions shall be assigned to represent persons charged in the district court department with concurrent felonies under section twenty-six of chapter two hundred and eighteen as further defined by the committee.

Section 8. Upon a determination by a court that a person accused of murder in the first or second degree is indigent, the chief counsel or his designee may assign the case to either the public counsel division or the private counsel division, subject to the approval of the justice making the determination of indigency.

Section 9. The committee shall establish standards for the public counsel division and the private counsel division which shall include but not be limited to:

(a) vertical or continuous representation at the pre-trial and trial stages by the attorney either assigned or appointed, whenever possible;

(b) required participation by each attorney in an approved course of training in the fundamentals of criminal trial practice, unless the attorney has a level of ability which makes such participation unnecessary;

(c) specified caseload limitation levels;

(d) investigative services;

(e) a method for the provision of social services or social service referrals;

(f) availability of expert witnesses to participating counsel;

(g) clerical assistance, interview facilities, and the availability of a law library and model forms to participating counsel; and

(h) adequate supervision provided by experienced attorneys who shall be available to less experienced attorneys.

Section 10. The committee shall monitor and evaluate compliance with the standards and the performance of counsel in its divisions in order to insure competent representation of defendants in all courts of the commonwealth and shall establish a procedure for the review and disposition of client complaints.

Section 11. The committee shall establish rates of compensation payable, subject to appropriation, to all counsel who are appointed or assigned to represent indigents within the private counsel division in accordance with the provisions of paragraph (b) of section six. Such rates of compensation shall be reviewed periodically at public hearings held by the committee at appropriate locations throughout the state, and notice shall be given to all state, county and local bar associations and other interested groups, of such hearings by letter and publication in advance of such hearings. Such periodic review shall take place not less than once every two years.

Section 12. All invoices regarding the services of counsel from the private counsel division, when counsel is to be compensated at an hourly rate of payment, shall be duly certified by the justice hearing a particular matter. The committee shall establish policies and procedures to provide fair compensation to private counsel, which shall include a remedy for any private attorney aggrieved by the amount of payment certified by any justice. All invoices shall be processed for payment within thirty days of receipt by the chief counsel. The committee may further prescribe such policies and procedures for payment as it deems appropriate.

Section 13. The committee shall appoint a chief counsel, whose responsibilities and duties shall be defined by the committee and shall include, but not be limited to, the overall supervision of the workings of the various divisions of the committee. The committee shall further appoint two deputy chief counsel, with duties defined by the committee, one of whom shall supervise the public counsel division, and the other shall supervise the private counsel division. The committee shall also prescribe the procedures for the appointment of all legal and nonlegal staff of the public counsel division and for the procurement of office space as may be required. The chief counsel shall authorize the certification of all payments under section twenty-seven G of chapter two hundred and sixty-one and section twenty of chapter twenty-nine. All legal and nonlegal staff of the public counsel division shall be full time and shall devote their entire time during ordinary business hours to their duties and shall neither directly or indirectly engage in the private practice of law. The chief counsel and deputy chief counsels shall likewise devote full time to their duties. The chief counsel shall be paid a salary comparable to the salary paid to a district attorney. The salaries of the deputy chief counsels shall be established by the committee. All other legal staff of the public counsel division shall be paid at salaries comparable to the salary paid to an attorney employed in a district attorney's office.

The counsel and other employees appointed by the committee shall not be subject to the provisions of chapter thirty-one.

Section 14. The public counsel division, except in cases of conflict of interest, shall represent indigent defendants in all appeals and related post-conviction remedies. In the case of a conflict of interest, the assignment shall be to the private counsel division.

Section 15. The committee shall consult regularly with a community advisory board appointed by the committee to represent the greater Roxbury community. Members of the community advisory board shall not receive compensation or reimbursement for expenses.

SECTION 3. Section thirty-four D of chapter two hundred and twenty-one of the General Laws is hereby repealed.

SECTION 4. For the purposes of planning and implementing the provisions of chapter two hundred and eleven D of the General Laws, the committee established in section one of said chapter one hundred and eleven D shall be appointed forthwith.

Five members shall be appointed for a term of one year, five for a term of two years, and five for a term of three years. Furthermore, the personnel employed by Roxbury Defenders Committee, Inc., a Massachusetts not for profit corporation, and all resources of said corporation which are attributable to state or federal funds, shall also be transferred to said division, if the board of directors of said corporation consents to such a transfer, and in that case said personnel shall be the initial employees of the Roxbury defenders unit required by said section, at salaries not less than those paid such employees by the Roxbury Defenders Committee, Inc. immediately prior to the effective date of this section. The committee is authorized to accept as a gift or to lease any other resources, including real property, from said corporation, and to become the successor to said corporation in any other respects which are mutually agreeable to the committee and the board of directors of said corporation. If said board does not consent to the transfer of personnel and of resources attributable to state or federal funds, the committee is not required to create a Roxbury defenders unit pursuant to said section, notwithstanding the provisions of said section. Thereafter, each member shall be appointed for a term of three years, pursuant to the provisions of section one.

SECTION 5. In the creation of the public counsel division set forth in section five of chapter two hundred and eleven D of the General Laws, all personnel, title to all real and personal property, all legally valid and enforceable claims and obligations, all facilities, and all other resources of the Massachusetts defenders committee shall be transferred to said division. The committee shall ensure the continued and uninterrupted representation by said division of any indigent client being represented by the Massachusetts defenders committee Roxbury Defenders Committee, Inc. at the time of said transfer.

SECTION 6. The provisions of sections two, three, and five of this act shall take effect July first, nineteen hundred and eighty-four.

Approved December 20, 1983.

Duggan Receives DLS Award



Left to right: Mary Ann Driscoll, DLS award recipient Edward J. Duggan, and MBA President Richard G. Hoffman.

Board of Delegates member Mary Ann Driscoll presented Edward J. Duggan an award for his outstanding efforts in the delivery of legal services to the poor on May 31 at the Association's Annual Meeting. The annual award was recently established by the Delivery of Legal Services Section to recognize an individual's outstanding service in the delivery of legal services. Since Duggan became a member of the MBA 45 years ago, he has given unselfishly to the provision of counsel to indigent defendants.

Upon his graduation from Harvard Law School in 1940, Duggan joined the Boston law firm of Lyne, Woodworth and Evarts. At the same time, he began service with the Voluntary Defenders Committee, a group of attorneys in Boston whose purpose was to provide legal counsel for those who, because of lack of funds, could not obtain a lawyer and were accused of a crime. In 1959,

when the Supreme Judicial Court issued its Rule 10 providing the right to counsel in criminal cases, signaling the demise of the volunteer effort, Duggan and Professor Livingston Hall of Harvard Law School drafted the legislation which established the Massachusetts Defenders Committee (St. 1960, c.565).

Duggan was one of the original appointees to the Massachusetts Defenders Committee in 1960. In 1961, he was elected Chairman of the Committee and served in that capacity until 1964. He continued as a member of the Committee until 1974, at which time he was again elected chairman. During his second tenure in that position, the Massachusetts Defenders Committee carried out major initiatives to improve the quality of its representation.

It was also during Duggan's tenure as Chairman that the Massachusetts Defenders Committee proposed to the Supreme Judicial Court that the entire system of counsel to the indigent be examined. As a result, the Court established the Committee on Counsel for Indigent Defendants in the District and Municipal Courts (Wilkins Committee), and Duggan was appointed as a member of that Committee, which made recommendations for the reorganization of the entire system of providing counsel to the indigent. During the last year of his term as Chairman, the Massachusetts Defenders Committee prepared and submitted legislation to completely reorganize this system — legislation which was ultimately enacted in 1983 — establishing the Committee for Public Counsel Services.

Among the Supreme Judicial Court's initial appointments to the new Committee was Edward J. Duggan, and, fittingly, he was named as the Interim Chairman by his colleagues. He currently serves as a member of the Committee, having recently been re-appointed to a new three-year term.

Throughout the 45 years he has devoted to this cause, Edward J. Duggan has had one goal — the provision of quality representation to the indigent. He has maintained this standard regardless of political pressure, criticism or apathy. He has served as a model to other members of the Voluntary Defenders Committee, the Massachusetts Defenders Committee and the Committee for Public Counsel Services, as well as to all of those who have been staff members of these programs.

Excerpt from Massachusetts Bar Association NEWSLETTER, Vol. 25,
No. 5, June/July, 1985, p. 3

EXCERPTS FROM REMARKS BY THE HONORABLE CHARLES RAY JOHNSON
FOLLOWING THE ADMINISTRATION OF THE OATH OF OFFICE AS ASSOCIATE
JUSTICE OF THE BOSTON MUNICIPAL COURT, OCTOBER 30, 1984

I shall miss being an advocate. To my brothers and sisters whom I leave in pursuit of this great art, I caution that there will be many who will seek to compromise you and your cause; but never temper your advocacy, for you are the preservers of social justice and the protectors of individual liberties. The sacrifices will be great and you will lose favor with many; but when all is said and done, justice will prevail. I caution that while personal ambition is to be encouraged, it should not take precedence over social responsibility. Lawyers are in the best position to know the hiding places of injustice. You must reveal such places--no matter where they may be.

There is much work to be done. There is a criminal justice revolution taking place in Massachusetts today, a revolution which demands your participation. Implementation of legislation creating the Committee for Public Counsel Services and its impact on the delivery of legal services to the poor; the advent of presumptive and mandatory sentencing; recodification of the criminal code; correctional reform, the proper balance between judicial efficiency and due process of law; and now, capital punishment. All of these things have given rise to crucial debates requiring your immediate involvement. Reactionary criticism is not enough; you must participate now before it is too late.

As a practitioner, I learned that there is a difference between judicial symbolism and judicial substance. That there is a distance between being appointed a judge and being a judge. Therefore, I do not seek or believe in instant judicial credibility. My true value as a judge remains to be seen. The quality of my adjustment from advocate to independent arbiter will be determined over time by the insatiable demands of the courtroom. However, my guiding lights from day to day will be a compassion for people; a knowledge of history; and, an awareness that while the law must always be respected, law and justice are not always synonymous and where there is conflict between these two great concepts, it must be resolved consistent with conscience and constitution, forever mindful that the law is not the myopia of judicial preference, but a legislative and constitutional mandate to balance the interests of pluralism and the ends of justice.

I am inspired by this great opportunity. And while I have no illusions that today places me in the category of Marshall, Wright, Hastie or Motley, there is at least one significant analogy between me and these great men and women: like them, I

believe a judicious temperament should not be confused with tolerance for injustice, whether it occurs in the streets of Boston, the cell blocks of Walpole, or the corridors of the courthouse. Injustice is provocative and should find no refuge in our courts.

The courts are not meant to accommodate political trends, be they conservative or liberal, but consistently to protect the guarantees of the Constitution. In our need to increase the rapidity of the caseload, we must be mindful that all that is practical may not be just; and all that is efficient may not be consistent with due process. And while judges must of necessity be careful of their associations least they give the appearance of impropriety, we must not become so distant from the reality of human frailty that we cannot temper our judgment with mercy or use common sense when making findings of fact.

The source of my pride today is not just the fact that I have become a judge. There will always be lesser and greater opportunities for public service. The greater source of my pride is that I see this day not only through my own eyes, but also through the eyes of a slave: In 1619 when the first Africans were brought to shores of Jamestown, Virginia, shackled and dehumanized, notwithstanding the degradation of their immediate situation, deep within them still flickered the hope of liberation. I am a manchild of that hope.

So you see, today is not just a celebration of my appointment to the bench, but a reaffirmation of a hope nurtured in bondage, a brief respite on the rugged road to freedom. Today represents the hope that someday soon in Massachusetts and throughout this nation, all Black children will know that their smooth black skin is a badge of glory and not an obstacle to opportunity. We move closer today to the possibility that my son and his peers will not have to suffer the psychological scar of national rejection, or exhaust their creative talents on a futile struggle against racism. Yes, there is much distance to travel, but we come one step closer today.

How can I possibly thank so many for so much. I suppose I could begin with my law partners and tell you of the great friendships we have shared through good times and bad. I could tell you of my clients who gave me purpose and meaning. I could speak of my family who gave me refuge in times of despair. I could tell you of the unsolicited support I received from so many when my confirmation seemed in doubt. I could tell you of the Honorable Joseph Feeney who teaches that righteousness comes in many colors and the green of the Irish shines brightest in the face of injustice. And, of course, there is the hero himself, the Honorable Richard L. Banks of the Roxbury District Court, a soldier of righteousness, a judge who seeks favor with justice and not with men.

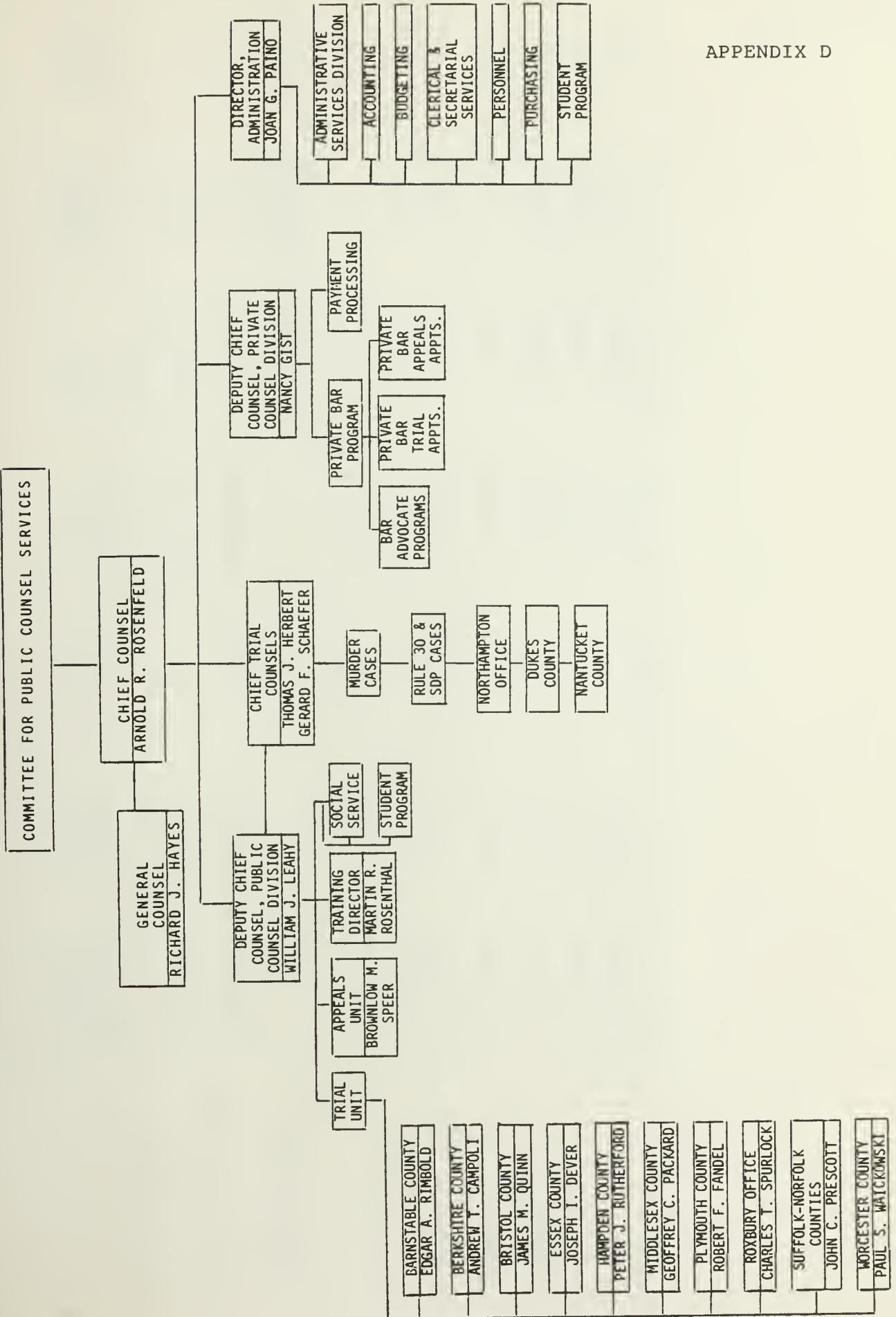
My confirmation as an Associate Justice of the Boston Municipal Court is testament to the power of fairminded people,

confirmation of the historic truth that a person can have no greater security than the respect of the people. Your confidence and goodwill nurture my spirit and not my vanity. Because of you, when justice beckons, I shall have the courage to heed the call.

My tenure as a judge will be a perpetual effort to maintain your respect through a faithful and just administration of the law.

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STAFF ORGANIZATION CHART



APPENDIX D

COMMITTEE FOR PUBLIC COUNSEL SERVICES
Interim Financial Report
Fiscal Year 1985

8/23/85

	PRIMARY APPROPRIATION	SUBSIDIARY INTERCHANGES	SUPPLEMENTAL APPROPRIATION	FINAL APPROPRIATION	PAYMENTS TO DATE	ESTIMATED OUTSTANDING OBLIGATIONS	UNEXPENDED BALANCE
01 Salaries, Permanent	\$ 1,371,069.00	\$ 324,819.00	\$ -0-	\$ 1,695,888.00	\$ 1,659,155.00	\$ 36,733.00	\$ -0-
02 Salaries, Temporary	3,233,718.00	(34,574.00)	-0-	3,199,144.00	3,131,111.00	68,033.00	-0-
03 Contract and Non-Employee Services:	8,985,974.00	(503,417.00)	1,200,000.00	9,682,557.00	7,782,800.00	1,977,260.00	(77,503.00)
Bar Advocate Programs					[4,090,388.00]	[208,576.00]	[-0-]
Private Attorneys					[3,480,987.00]	[1,750,645.00]	[(77,503.00)]
Other					[211,425.00]	[18,039.00]	[-0-]
08 Electricity	8,560.00	10,550.00	-0-	19,110.00	18,099.00	-0-	1,011.00
10 Travel	87,312.00	(11,000.00)	-0-	76,312.00	76,033.00	-0-	279.00
11 Printing	6,825.00	16,800.00	-0-	23,625.00	22,068.00	1,101.00	456.00
12 Maintenance	4,954.00	7,778.00	-0-	12,732.00	11,952.00	841.00	(61.00)
13 Special Supplies and Expenses	11,299.00	(7,990.00)	-0-	3,309.00	2,805.00	552.00	(48.00)
14 Office and Administrative Expenses	232,995.00	87,040.00	-0-	320,035.00	302,084.00	15,400.00	2,551.00
15 Equipment	16,148.00	110,994.00	-0-	127,142.00	24,134.00	102,868.00	140.00
16 Rentals	371,857.00	(1,000.00)	-0-	370,857.00	365,461.00	4,391.00	1,005.00
TOTALS	\$14,330,711.00	\$ -0-	\$1,200,000.00	\$15,530,711.00	\$13,395,702.00	\$2,207,179.00	(\$72,170.00)

APPENDIX E

Case
No. 100
100

MASS. J13.1:986

The Commonwealth of Massachusetts

COMMITTEE FOR PUBLIC COUNSEL SERVICES

GOVERNMENT DOCUMENTS
COLLECTION

NOV 13 1987

University of Massachusetts
Depository Copy



SECOND ANNUAL REPORT

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The Commonwealth of Massachusetts

Committee For Public Counsel Services

William E. Bernstein, *Chairman*
Mary Ann Driscoll, *Vice Chairman*
Walter B. Prince, *Secretary*

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Janis M. Berry
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The Commonwealth of Massachusetts

Committee for Public Counsel Services

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April 9, 1987

The Chief Justice and Associate
Justices of the
Supreme Judicial Court
New Court House
Pemberton Square
Boston, MA 02108

RE: FISCAL YEAR 1986 ANNUAL REPORT

Dear Mr. Chief Justice and Justices:

Pursuant to Section 4 of Chapter 211D of the General Laws of the Commonwealth, it is my honor to submit to you the second Annual Report of the Committee for Public Counsel Services.

I am pleased to report to you that, since its last report, the Committee has made major advances toward achieving its mandate to plan, oversee, and coordinate the delivery of legal services to the indigent in criminal and certain non-criminal cases. The accompanying Annual Report details the Committee's accomplishments.

As the Chairman of the Committee since last June, it has been my privilege to preside over the attorneys whom you have selected as the Committee for Public Counsel Services. I am pleased to inform you that they have worked as a cohesive unit who have the common goal of providing quality representation to the clients of the Committee. They have given enormous time and effort, without compensation, and our successes are attributable in no small way to their dedication to this public service.

I would also like to commend the Committee's full-time staff and all of the private attorneys who have worked so hard to provide the services to our clients for so little compensation. They have given true meaning to the "right to counsel." As the Committee's former chairman, Douglas Woodlock, stated in his letter of resignation (upon receipt of his commission as a judge of the Federal District Court of Massachusetts):

The Committee's goal is single faceted: that of ensuring that each individual litigant for whom the Committee provides counsel receives the undivided representation of his or her attorney in pursuing the sole and ultimately self-defined concerns of that client.

We will continue to work toward that goal.

Sincerely,

A handwritten signature in cursive script, reading "William E. Bernstein".
William E. Bernstein
Chairman

WEB/pd

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I. INTRODUCTION

This is the second annual report of the Committee for Public Counsel Services (CPCS), which was established pursuant to Chapter 673 of the Acts of 1983 and began operations on July 1, 1984. It is the Committee's mandate to:

"plan, oversee, and coordinate the delivery of criminal and certain noncriminal legal services by all salaried public counsel, bar advocate and other assigned counsel programs, and private attorneys serving on a per case basis." (General Laws Chapter 211D, Section 1.)

The accomplishments of the Committee for Public Counsel Services during its first year were described in its First Annual Report. In that report, the Committee established six major goals for its second year of operations. These goals were:

1. establishment of systems for the appointment of counsel in all cases;
2. provision of fair and adequate compensation for the private bar;
3. development and conduct of training programs;
4. establishment of standards of performance for attorneys;
5. establishment of automated bill processing and data collection systems;
6. improvement in the ratio of support services to attorneys in the Public Counsel Division and the provision of support service to the Private Counsel Division.

This report will discuss the Committee's progress towards achieving these goals, and it will examine additional accomplishments of the Committee during the period July 1, 1985, through December 30, 1986.

II. GOALS FOR 1986 — ACCOMPLISHMENTS

A. ASSIGNMENT OF COUNSEL SYSTEMS

1. New Rules

During this past year, the two-year project of revising court rules governing the assignment of counsel in all courts was completed and submitted to the Supreme Judicial Court. After discussions with the Court, a new Supreme Judicial Court Rule 3:10 was issued, effective July 1, 1986, standardizing the assignment of counsel for indigents in all courts of the Commonwealth. The new rule, in accordance with Chapter 211D, mandates that the Committee — not the judge — is responsible for the assignment of counsel for the indigent. In addition, the rule defines and standardizes for the first time the terms "indigent" and "indigent but able to contribute," which should insure that only parties who truly qualify be provided counsel under this system. These definitions fulfill one of the mandates of the statute (Chapter 673, Acts of 1983, Section 2).

2. Murder Cases

Assignments of murder cases and certain post-conviction matters are made by the Chief Counsel under Chapter 211D. The Chief Counsel assigns murder cases to attorneys who meet certain published qualifications. They must have tried at least ten jury trials of a serious nature (five of which must have been life felony cases), and they must have had at least five years' experience in criminal practice.

During the period covered by this report, a total of 187 murder assignments were made to a total of 138 attorneys. Most of these were to private counsel (177 cases to 130 attorneys). The largest number of cases were assigned in Suffolk County (84). A chart listing the numbers of assignments by county is included in Appendix A.

3. Appellate Cases

Appellate cases which cannot be handled by the Public Counsel Division Appeals Unit are assigned to private attorneys who have met certain qualifications and who have agreed to abide by the Committee's performance standards for appellate cases. A total of 87 appellate cases were assigned to private attorneys during this period.

4. Mental Health Cases

A new system was introduced for mental health-related cases. Performance standards for these cases were prepared and promulgated in conjunction with the Mental Health Legal Advisors Committee (MHLAC). An eight-hour training program was offered; attorneys who completed the training and agreed to abide by the standards became the only attorneys eligible to receive these assignments.

5. Expansion of Suffolk Bar Advocate Program

Another significant step in improving the assignment systems was the implementation of the Boston Bar Association-sponsored Suffolk County Bar Advocate Program for all district courts in Suffolk County. Previously, the program operated only in the Boston Municipal Court. Now, attorneys-of-the-day are assigned in each of the eight district courts as well. With the implementation of this program, the district court criminal assignment system is now complete statewide.

B. FAIR AND ADEQUATE COMPENSATION FOR THE PRIVATE BAR

In fiscal year 1986, private attorneys handled approximately 115,000 cases by means of the two systems of assignment which the Committee inherited from the Trial Court, and which have continued largely intact. The two systems are:

1. Bar Advocate Programs

In each county, the Committee contracted with local bar association-sponsored bar advocate programs to schedule and pay private attorneys to provide services in district court criminal matters. In Suffolk County, compensation was \$25 per hour for out-of-court time and \$35 per hour for in-court time. Attorneys outside Suffolk County were compensated at a flat rate of \$150 for all work done on all cases they received on their duty day, with additional hourly compensation if they appealed a case to the jury session. This latter group of attorneys handled about 75,000 cases in fiscal year 1986 for which they were compensated \$3,566,819 in fiscal year 1986. (See Appendix B for caseload and cost data.)

2. Case-by-Case Assignments

Attorneys providing representation in all other matters were assigned on a case-by-case basis and compensated hourly. The rates in effect were \$35 per hour for in-court time, and \$25 or \$35 per hour for out-of-court time (depending on the type of matter). Total compensation in fiscal year 1986 for such matters (which include civil matters, such as care and protection matters, civil commitment proceedings, *Rogers*-type proceedings, and certain other guardianships) was \$6,309,520.

As a part of the fiscal year 1987 state budget, the Legislature allowed the Committee to change the system of compensation for attorneys assigned through bar advocate programs in district court criminal proceedings outside Suffolk County from the flat payment for cases assigned on the duty day to an hourly basis on April 1, 1987. This is a major step in improving the quality of services provided. It achieved recognition of the crucial principal of compensating counsel for all time actually spent on cases. Once in place, it is expected to raise the average compensation for a district court criminal case outside Suffolk County from about \$46 to about \$120.

However, this change does not accomplish the goal of providing adequate compensation. The current \$25/\$35 per hour rate for in-court and out-of-court time, which applies for most cases, is inadequate. The Committee will be holding public hearings on compensation early in 1987.

C. TRAINING PROGRAMS

One of the Committee's most significant accomplishments over the past year has been its development of a comprehensive training program for both private and public attorneys and administrative and support staff. The Committee now requires all attorneys who wish to provide representation in criminal matters in the district courts to complete a training program or to have the requirement waived on the basis of practice experience. These programs are provided to Private Counsel Division attorneys at no cost to the attorneys, but they must agree to take assignments in the pertinent area for one year.

1. District Court Criminal Advocacy Training for Bar Advocates

A two-day district court criminal advocacy training program has been given eight times in six different locations throughout the state. This program, co-sponsored with both the county bar advocate programs and Massachusetts Continuing Legal Education, Inc. (MCLE), is modeled after the bar advocate training program developed in Suffolk County by the Boston Bar Association. It consists of lectures on procedure and tactics, demonstrations of essential trial skills, and small group workshops in which participants perform trial skills and receive feedback from experienced practitioners. Approximately 700 attorneys have attended this program so far. Beginning July 1, 1987, all bar advocates must have completed the program, or be qualified for a waiver by the Chief Counsel, to receive assignments.

2. Care and Protection Training

Beginning on July 1, 1986, concurrent with CPCS assumption of responsibility for assignments of counsel for Care and Protection and CHINS (Children in Need of Services) cases in the juvenile and district courts, a two-day training program has been offered in three locations. So far 254 attorneys have attended. Like the criminal advocacy program, this training consists of lectures, demonstrations and participatory workshops. Attorneys must take the program, unless they qualify for a waiver, by October 1, 1987, to remain on the lists for these assignments. It, too, is co-sponsored with MCLE.

3. Mental Health Training

Beginning in October, 1985, a series of two-day, ten-hour programs began for Mental Health cases, including civil commitments, forced medication and guardianships. This program, co-sponsored with MHLAC, is modeled after a similar one given by CPCS and MHLAC in 1985. As of now, 98 attorneys have taken it, and three more programs are already scheduled for early 1987.

4. Post-Conviction/Appellate Training

Attorneys desiring to be assigned to post-conviction matters have been, unless waived, required to attend a one-day training program covering the whole range of post-conviction issues. This program, chaired by CPCS Chief Appellate Attorney Brownlow Speer, and with a faculty of both public and private counsel, has been given in two locations and was attended by 70 people.

5. Juvenile Delinquency Training

Beginning December 6, a one-day program on juvenile delinquency cases was initiated. By October, 1987, lawyers receiving assignments in such cases in the juvenile and district courts must take both this program and the two-day bar advocate program, unless they qualify for a waiver. The first program was attended by 62 attorneys.

6. Public Counsel Division New Attorney Training

The two-week training program for new Public Counsel Division attorneys has been revised and expanded into a rigorous three-week program with a variety of new pedagogic techniques. Lectures and discussions are supplemented with videotape demonstrations and role-playing exercises, in which trainees are critiqued by senior staff attorneys. The program concludes with a mock trial and critique.

7. Advanced Training

On May 2, 1986, the second annual statewide conference was held in Westford. For the first time, 50 private attorneys were in attendance, in addition to the entire Public Counsel Division staff. Two major areas of attention were cases of alleged child sex abuse and defense of drunk driving cases. Other helpful sessions addressed protecting the record, media relations, use of CPCS computer technology, investigation techniques, and communication skills.

In addition, an ongoing continuing education program was initiated in October, with a demonstration and lecture on cross-examination by Larry Pozner, Esq., of Denver, Colorado, a faculty member of the National College of Criminal Defense Lawyers. This program, attended by over 100 public and private attorneys, will be made available at other locations on videotape.

A second such program took place January 15, 1987, in Cambridge, addressing the tactics, procedures, and statutory changes for sexually dangerous person cases. Other programs currently in the planning process include training for the attorneys affected by the two-county experiment abolishing trial de novo, a program on single justice practice, and a program addressing ethical issues.

Finally, seven staff attorneys and two Committee members were able to attend the annual meeting of the National Legal Aid and Defender Association, and four staff attorneys attended the two-week program of the National College of Criminal Defense Lawyers. Both programs were excellent educational opportunities.

8. Training for Administrative and Support Staff

With the advent of automated equipment, word processing training seminars, conducted by in-house staff, have been provided for the administrative and secretarial staff. Additionally, several administrative assistants throughout the state were selected to participate in a supervisory training program sponsored by the Bureau of Human Resource Development. Cathy Stewart, the Office Support Coordinator who was hired in February, 1986, participated in an instructor training program.

D. PERFORMANCE STANDARDS

1. Termination of Parental Rights Cases

During the past year, performance standards governing representation of parents and children in state intervention and termination of parental rights cases were developed through the efforts of Attorney Jinanne Elder, a private practitioner specializing in family and children's issues, and were adopted by the Committee.

An advisory committee on family services has been designated by the Chief Counsel, to be chaired by Attorney Elder and Attorney Jeremy Stahl, and is expected to assist Committee staff in its assumption of responsibilities in these areas.

2. Criminal Cases

In addition, a special committee, chaired by Committee member Attorney Nancy Gertner, and consisting of experienced criminal practitioners at both the district court and Superior Court levels, has completed proposed standards for performance in criminal cases. These standards should be ready for promulgation early in 1987. A list of members of the Advisory Committee on Standards in Criminal Cases is found in Appendix C.

3. Monitoring

Finally, a monitoring protocol was developed for use by bar advocate program administrators to enhance their monitoring of the performance of panel attorneys. The Committee proposed in its fiscal year 1988 budget proposal the employment of six attorneys to provide the capability to coordinate monitoring on a regional basis and to back up local program monitors.

E. TECHNOLOGY

1. Bill Processing

For the past two years, the Committee has been processing over 40,000 Private Counsel Division bills each year. With the introduction of the new computerized data collection and payment processing system, a new billing form was developed, eliminating the necessity for attorneys to complete more than one billing form in order to be compensated for services. With the introduction of cut-off dates for bills (requiring submission of bills within 30 days of the disposition of the case or, for cases pending at the close of the fiscal year, by August 1), improved processing at the Comptroller's Division, and an expansion of the staff, most attorneys have experienced fewer delays in payment. Additionally, the Committee has filed an amendment to its enabling legislation which would eliminate the requirement that the justice hearing the matter certify the bills. Thus, a step which often results in significant delay would be removed from the process, further decreasing the turnaround time between an attorney's submission of the bill and final receipt of a check.

2. Accounting

The Accounting Unit, whose responsibilities include maintaining the financial records of the agency, processing vendors' payments and other accounting transactions (exclusive of private attorneys' invoices and related court costs), and processing payrolls and other staff-related expenses, was engaged in preparations for the new state accounting system. With the implementation of the Massachusetts Management Accounting and Reporting System (MMARS) on July 1, 1986, much time and energy was devoted to establishing compatibility. Virtually all accounting forms were revised and new procedures were introduced. The final stages of the implementation process will occur in February, 1987. At that time, it is anticipated that the responsibility for the data entry of accounting transactions will pass from the Comptroller's Division to CPCS. This capability will result in the more expeditious processing of accounting documents.

3. Litigation Support

Computer systems were installed in all local Public Counsel Division offices during this period, and a test design has been developed for on-line litigation support, including electronic research, development of motions and jury instructions, and a new system for collection and storage of case information. It is anticipated that the design will be tested and implemented in the next year.

4. Telecommunications

During the past year, telecommunication systems in the branch offices have been modernized. As new space was leased, new computer-controlled telephone systems were installed in the Brockton, Dedham, Lowell and Worcester offices. By the end of the 1988 fiscal year, all offices will be equipped with this state-of-the-art technology. In addition, software was developed to enable the local Public Counsel Division offices to provide information electronically to the Boston headquarters.

F. SUPPORT SERVICES

Although the Committee is mandated to provide investigative resources, social services support, and a range of other support resources, it has only been able to provide some of these on a very limited basis due to the lack of funding.

1. Investigators

In the absence of any additional funding for increased investigative services, the Committee augmented its efforts in this area by using student assistance where available. In most offices, one or more student volunteers or interns assisted the staff investigator in providing thorough investigations in most cases.

It is a major goal of the Committee to expand its investigative services as aggressively as resources will permit. Increased use of students appears to be the most productive approach until funding is increased.

2. Social Services

During the last year, social services support was also expanded by increasing use of students. Most of the offices in the Greater Boston area were provided with some social service support, under the direction of Social Services Director Joseph Murphy.

In addition, a new social services coordinator, Margaret Gibbons, was hired for Worcester and Springfield. She will be available primarily to the Public Counsel Division. Both she and Mr. Murphy have provided limited support to private counsel as well.

Social Services Director Joseph Murphy and Administrative Assistant Carmen Arroyo have prepared a social services resource directory for the use of attorneys which will be published early in 1987.

Providing social services remains a major problem for the Committee because of its limited resources. Renewed efforts will be made during the next year to upgrade the situation.

III. OTHER MAJOR INITIATIVES

A. National Legal Aid and Defender Association Evaluation of Bar Advocate System

In May of 1985, the Committee commissioned a study of the operations of the bar advocate system by the National Legal Aid and Defender Association. Completed in early 1986, the study provided an assessment of the performance of the bar advocate programs and an analysis of the relationship between the quality of services provided and the level of compensation. The study's major findings follow.

1. The method of compensating attorneys in the counties outside of Suffolk (\$150 per assigned day no matter how many cases were assigned or how many appearances were required to complete the case) created a disincentive for providing quality representation.
2. Training programs were either nonexistent or not geared to the types of basic knowledge necessary for most bar advocates, nor was there any resource center available for either questions or materials on criminal advocacy.
3. There was no standard or guideline upon which advocates could measure their performance or upon which others could do so; nor was there any guideline to provide a basis upon which the various approaches to a case could be examined.
4. No monitoring of the provision of services existed, so that it was impossible to tell if accurate bills were being submitted and if performance was at acceptable standards.
5. There was a lack of adequate support services. Bar advocates did not have available either investigators, social service personnel, or interpreters, nor were they knowledgeable about what resources were available through the courts or other means.

The report was referred to the Subcommittee on District Court Representation, which has been following up on the implementation of the recommendations. Some of the recommendations already implemented include a change in the system of compensation, development of monitoring systems, and the conduct of training programs.

B. Legislative Program

The Committee's legislative efforts for this period can be divided into two major areas.

1. Budget

Not only was the Committee able to obtain increased financial resources to fulfill its mandate, but more importantly, it gained statutory recognition for new responsibilities. Changes in the state budget include:

- a. the system of compensation for attorneys accepting assignments through the bar advocate programs was changed to enable the Committee to pay the bar advocates by the same method statewide;
- b. the responsibility for funds for counsel for indigent juveniles was transferred from the Trial Court to the Committee, and
- c. the responsibility for indigent court costs was transferred from the Trial Court to the Committee.

2. Other Legislation

The Committee continued to take an active role in the legislative process, adopting positions and advocating on a variety of proposed bills pending before the General Court.

- a. The Committee and staff continued its active opposition to the proposed legislation to establish a presumptive sentencing system for crimes against the person. This year, the Committee was joined by a group of Superior Court Department justices in opposing the legislation.
 - b. Despite Committee efforts, legislation to eliminate trial de novo on a test basis in two counties was enacted and signed into law.
 - c. Legislation stiffening the laws on drunken driving was passed, although the Committee's criticisms resulted in some improvements in this bill during the legislative process.
 - d. A Committee-sponsored bill to clarify the right to individual voir dire of jurors was enacted.
3. For the first time, the Committee developed its own legislative package for submission to the General Court. Bills submitted would:
- a. revise the Committee's enabling statute;
 - b. revise the indigent court costs law;
 - c. increase the threshold amounts for felonies for larceny and related cases;
 - d. regulate the non-payment of fines;
 - e. compensate innocent persons unjustly convicted;
 - f. require corroborating evidence in identification cases;
 - g. require a probable cause hearing for persons directly indicted;
 - h. provide for accurate records of proceedings in the jury-of-six, and
 - i. require the transfer of district court judges on a regular basis.

C. IMPROVEMENT OF PHYSICAL FACILITIES AND EQUIPMENT

During this period, major steps were taken to improve the physical facilities and equipment for the full-time staff.

The Private Counsel Division and part of the Boston office trial staff were provided with new office space and a new office was opened in Norfolk County, staffed by four attorneys and a secretary. The creation of this Dedham office has increased the number of CPCS offices to twelve.

New leases were also negotiated for office space in Barnstable, Lowell, Pittsfield, Salem, Springfield and Worcester. The Lowell office was relocated, while the Worcester office was expanded at its present location. Although the Brockton lease was negotiated during the 1985 fiscal year, the new office site was not occupied until the beginning of the 1986 fiscal year.

In addition, as noted above, automated data processing equipment was installed in all offices, and the word processing system in the Appeals Unit was expanded so that it is available to the attorneys as well as to the secretaries.

During the latter part of the 1987 fiscal year, the Essex County office will relocate from Lynn to Salem, and the Barnstable, Pittsfield and Springfield offices will be relocated.

D. SPANISH LANGUAGE PROGRAM

The Advisory Committee on Non-English Speaking Clients reported to the Committee on a series of recommendations to improve services in this area. Among the programs implemented were:

1. hiring of a staff person to coordinate services to Spanish speaking clients;
2. institution of Spanish language classes in the Boston and Springfield offices for both public and private counsel;
3. updating of the list of bilingual attorneys available to the courts;
4. issuance of a policy directive for the representation of non-English speaking clients by the Public Counsel Division;
5. new recruitment efforts for bilingual attorneys for the Public Counsel Division staff.

A list of the members of the advisory committee is found in Appendix D.

E. LAW REFORM

In addition to its law reform efforts carried out through its legislative program and the appeal of cases by the Appeals Unit, the Committee was active in other important legal reform areas.

1. The Committee brought two petitions under G.L. Chapter 211, Section 3, the general superintendence provision, to affirm the statutory and Committee policy of vertical representation. This policy was upheld by the single justice in both cases.
2. The Committee filed an amicus curiae brief in the case of *Commonwealth v. Delverde*, opposing the concept of "substituted judgement" in a guilty plea in a criminal case. The Supreme Court's decision (398 Mass. 288) supported the Committee's position.
3. The Committee brought an interlocutory appeal involving the ethical issue of attorney withdrawal in client perjury cases. The single justice allowed the attorney to withdraw in this instance and set out guidelines for this type of situation.
4. The Committee co-sponsored a conference on protection of counsel from prosecution attempts to obtain attorney records and information in violation of the attorney-client privilege.

IV. PERSONNEL MATTERS

(See Appendix E for Staff Organization Chart.)

A. THE COMMITTEE

There were several changes in the makeup of the Committee during this period. Douglas Woodlock, the Committee's first chairman, was nominated by the President and approved by the United States Senate to be a judge of the Federal District Court of Boston. (A copy of Justice Woodlock's letter of resignation is found in Appendix F.) The Committee elected its vice chairman, William E. Bernstein of Worcester, to be the new chairman. Attorney Mary Ann Driscoll of Boston was elected vice chairman. Attorney Walter B. Prince of Boston was elected secretary.

In addition to Woodlock, three other Committee members resigned. Attorney Joseph T. Travaline of Burlington was named a justice of the District Court Department of the Massachusetts State Trial Court. The Honorable Rudolph F. Pierce and Attorney Severlin B. Singleton, III, resigned because of the press of their practices. The Supreme Judicial Court named four new members to the Committee. They are: Honorable Margaret C. Burnham, a former justice of the Boston Municipal Court and a fellow at Harvard University; Attorney Philip X. Murray, a private practitioner and expert in court administration; Attorney Geraldine S. Hines, a private practitioner and former chief counsel of the Roxbury Defenders Committee, and Attorney Janis M. Berry, a former Assistant United States Attorney in Boston and member of the firm of Ropes and Gray.

Upon taking office, Chairman Bernstein reorganized the subcommittees and special committees. The new subcommittee and special committee membership is listed in Appendix G to this report.

B. STAFF CHANGES

1. On March 3, 1986, Hampden County Regional Supervisor Peter J. Rutherford became the third attorney-in-charge of a regional office to be honored with a judgeship during the short existence of CPCS. He was succeeded by Mary Lou Rup, a senior member of the Springfield office who had initially joined the Massachusetts Defenders Committee (MDC) as an attorney in its Pittsfield office.
2. Not long thereafter, Berkshire County Regional Supervisor Andrew T. Campoli retired after twenty-seven years' service to concentrate on a law practice with his sons. Rita Scales was named acting attorney-in-charge.
3. On July 1, 1986, the long-envisaged office in Norfolk County (Dedham) was opened. Joel A. Goodman, the assistant regional supervisor in the Boston Trial Unit and a veteran of fourteen years' service to MDC and CPCS, was named regional supervisor. He and his staff of attorneys will provide representation for the first time to persons charged with major felonies in the district courts of Norfolk County.
4. Stephanie Page, who had previously served as the supervisor in the Boston Municipal Court and in Dorchester District Court, was named to succeed Goodman as the assistant regional supervisor in the Suffolk County office.
5. Charles T. Spurlock of the Roxbury Defenders Unit was the fourth attorney-in-charge to be named to a judgeship and he was replaced by Ronald P. Locke, who began his service with MDC as an investigator and had previously served as a trial attorney in Boston and Roxbury.
6. During the past year, the Committee's General Counsel, Richard J. Hayes, resigned to enter private practice but maintained his relationship to the Committee on a contract basis, providing advice to the Chief Counsel and carrying out specified legislative liaison efforts as required. The Committee hired Attorney Lisa M. Hewitt as its new Legislative Counsel in September, 1986.
7. Bryan Shumsky, a graduate of Stanford University, was hired as the Data Base Manager. The new post of Special Counsel for Technology was created to provide oversight and long-range planning. Appeals attorney Richard Zorza was named to serve in that capacity.
8. Teresa E. Rae was assigned to be a supervisor in the Boston Accounting Unit, and Nancy L. Chiaramonti became the new supervisor of the Purchasing Unit.
9. Edgar A. Rimbold, the attorney-in-charge of the Barnstable office and former chief counsel of the MDC, retired, and William W. Robinson of the Plymouth County office was named as the new attorney-in-charge in Barnstable County.
10. Gerard F. Schaefer, Chief Trial Counsel, and former chief counsel of the MDC, retired.
11. Thomas J. Herbert, Chief Trial Counsel, died unexpectedly of a heart attack.

C. RECRUITMENT

1. Administrative Staff

In keeping with the Committee's affirmative action goals, concerted efforts were made to recruit minorities. Those endeavors resulted in a 33.3% increase in the number of minority employees on the administrative and clerical staff statewide.

2. Legal Staff

- a. The Public Counsel Division initiated a program of early employment offers to highly qualified candidates with particular emphasis on the hiring of minorities and females. Through this program, two attorneys were hired for the Trial Unit and one was hired for the Appeals Unit. Based upon the initial success of this effort, it is intended to expand this "early offer" program for future recruiting. As a result of aggressive recruiting, the makeup of the legal staff has increased from 11.5% minority to 18% minority and from 30% female to 40% female in the two years of operation of the Committee.
- b. The Division also began a policy of seeking outside experienced criminal practitioners to fill some senior attorney positions. When the Springfield office, in early 1986, suffered the loss of three experienced lawyers from its ten-attorney staff, two of the three replacements were experienced criminal practitioners, one a public defender from another state and the other a former prosecutor.

V. PUBLICATIONS

During this period, the Committee issued a variety of different publications designed to assist both public and private attorneys in carrying out their responsibilities. These included:

A. THE CPCS NEWSLETTER

Three issues of the newsletter were published by the Committee. Regular features in the newsletter included "Casenotes," highlighting recent Massachusetts decisions of widespread concern, or which substantially affect individual rights; "Forum," an analytical piece on an area of law of major interest to counsel representing indigents, including suggestions for tactical approaches; "Personnel Update," listing changes, new hirings, transfers, resignations, and other actions of the full-time staff; "Schedule of Training Programs," listing planned training programs for the next several months; "Comment," an editorial column on an issue of current importance as well as other articles of special interest.

B. THE FIRST ANNUAL REPORT

This report reviewed the Committee's accomplishments for its first year of operations.

C. THE MANUAL FOR COUNSEL ASSIGNED THROUGH THE CPCS

This booklet includes the various policies and procedures to be followed by assigned counsel.

VI. FISCAL MANAGEMENT

The Budget Unit coordinated budget preparation and provided financial management reports. The following compilation reflects the budgets which have been requested by the Committee and the amounts which have been appropriated by the Legislature to date.

FISCAL YEAR	BUDGET REQUEST	PRIMARY APPROPRIATION	SUPPLEMENTAL APPROPRIATION	TOTAL
1985	\$ —	\$14,330,711	\$1,200,000	\$15,530,711
1986	19,613,634	15,872,588	1,761,783	17,634,371
1987	25,820,462	21,295,649		
1988	30,257,300			

(See Appendices H, I and J.)

The 1987 fiscal year appropriation contained funding for counsel to juvenile indigents totalling \$2,096,702 and funding for the payment of indigent court costs totalling \$550,000. Funds for these purposes were appropriated previously to the Trial Court. For this fiscal year period, the Legislature also approved three new positions which increased the agency's total number of authorized positions from 193 to 196. It also inserted in the budget line item language to equalize compensation for all private attorneys who are assigned to criminal cases in the district courts of the Commonwealth. Finally, a request to designate the appropriation account as a PAC account (Prior Appropriation Continued) was granted and enacted by the Legislature. As a result, unexpended 1986 fiscal year funds were reappropriated for use during the 1987 fiscal year and are available to pay for any prior year expenses. New systems were required for all of these changes.

In the past fiscal year, the Committee also assumed responsibility for processing payments to vendors compensated through G.L. Chapter 261, Section 27A-G, the Indigent Court Costs Fund. Monies from this fund are available to indigents in civil and criminal matters in order to assure that the applicant receives as effective a prosecution, defense, or appeal as s/he would have if s/he were financially able to pay. The fund typically compensates for costs of service, publication, blood tests, investigators, etc.

VII. APPELLATE CASES

The Committee continued to produce high-quality briefs and representation for its clients. Under present policy, the Appeals Unit handles all cases appealed from the Trial Unit unless a conflict of interest has arisen in the case; e.g., the client desires to claim ineffective assistance of counsel by his trial attorney. The Appeals Unit is also assigned cases appealed by non-public division attorneys and/or assigned to the Committee by the courts on a random basis, but within the Unit's caseload limitation as established by the Appeals Standards. All other cases are assigned to private counsel attorneys.

While appellate attorneys lose far more cases than they win because of the low percentage of reversals of criminal convictions in the appellate courts, they continue to achieve major advancements and reforms in the criminal law through their efforts. Among the principal legal achievements by the Committee during the period of this report are the following cases.

Commonwealth v. Brown, 395 Mass. 604 (requirement of adherence to Superior Court Rule 6 in sequence of exercise of peremptory challenges of prospective jurors); *Commonwealth v. Kelleher*, 395 Mass. 821 (defective "reasonable doubt" instruction to jurors implicates Constitutional requirement of due process); *Commonwealth v. Trapp*, 396 Mass. 202 ("business record" not admissible under G.L. c.233, §78 if made after commencement of proceedings against defendant; evidence of defendant's "other bad acts" inadmissible for purpose of defeating insanity defense); *Commonwealth v. A Juvenile*, 396 Mass. 215 (trial judge must hold colloquy with defendant personally before interrogating prospective jurors, under G.L. c.238, §28, paragraph 2, as to racial bias); *Commonwealth v. Anderson*, 396 Mass. 306 (error for judge to fail to charge on evidentiary

effect of witness's prior inconsistent statement); *Commonwealth v. Burno*, 396 Mass. 622 (defining level of injury to alleged victim warranting defendant's conviction of assault and battery with dangerous weapon on "wanton or reckless" theory); *Commonwealth v. Guilfoyle*, 396 Mass. 1003 (judge abuses discretion by exercising it for impermissible purpose of creating unfair prejudice to defendant); *Commonwealth v. Two Juveniles*, 397 Mass. 261 (limits of confidentiality privilege under G.L. c.233, §20J, for statements of alleged rape victim to "sexual assault counsellor"); *Commonwealth v. Ford*, 397 Mass. 298 (certified record of prior conviction used to impeach defendant and admitted as exhibit must not contain extraneous prejudicial matter); *Commonwealth v. Brow*, 20 Mass. App. Ct. 375 (judge's sua sponte charge on "consciousness of guilt" must contain mandatory *Toney* instructions); *Commonwealth v. Fudge*, 20 Mass. App. Ct. 382 (police seizure of items not described in search warrant is warrantless seizure which Commonwealth bears burden of justifying); *Commonwealth v. Mendrala*, 20 Mass. App. Ct. 398 (in alleged rape case, examining doctor's "opinion" as to credibility of victim's report of sexual assault is inadmissible); *Commonwealth v. Flanagan*, 20 Mass. App. Ct. 472 (error for judge to preclude defendant from cross-examining police officer as to reason for failure to conduct "lineup" identification procedure); *Commonwealth v. Binienda*, 20 Mass. App. Ct. 756 (error to admit "prior consistent statement" of prosecution witness into evidence where statement was made after witness's motive to fabricate arose); *Commonwealth v. Seminara*, 20 Mass. App. Ct. 789 (interpreting *Daye* rule as to admissibility of photo of defendant allegedly identified by eyewitness to crime); *Commonwealth v. Sullivan*, 20 Mass. App. Ct. 802 (quantification of "reasonable doubt" in judge's charge to jury is serious error); *Commonwealth v. Key*, 21 Mass. App. Ct. 293 (inadmissibility of police officer's opinion as to defendant's resemblance to perpetrator as described by victim); *Commonwealth v. Saez*, 21 Mass. App. Ct. 408 (insufficiency of evidence that defendant was acting as "lookout" cannot be cured by conjecture or surmise); *Commonwealth v. Gauthier*, 21 Mass. App. Ct. 585 (jury must be free to infer prosecution witness's bias from fact of dismissal before trial of criminal charge pending against him); *Commonwealth v. Rivers*, 21 Mass. App. Ct. 645 (Commonwealth must establish four *Brown* factors before cross-examining defense witness as to failure to report exculpatory information to police); *Commonwealth v. Bassett*, 21 Mass. App. Ct. 713 (prosecutor's argument to jury on defense witness's failure to report exculpatory information to police requires foundation of evidence of presence of four *Brown* factors); *Commonwealth v. Sevieri*, 21 Mass. App. Ct. 745 (prosecutor prohibited from inviting jurors to put themselves in victim's place or suggesting that jurors will have to explain their verdict to others); *Commonwealth v. Coakley*, 21 Mass. App. Ct. 917 (district court judge must conduct *Duquette* colloquy with defendant as prerequisite to validity of defendant's waiver of appeal for trial *de novo*); *Commonwealth v. Banker*, 21 Mass. App. Ct. 976 (judge in sentencing defendant must not punish him for having exercised his right to trial); *Commonwealth v. Miranda*, 22 Mass. App. Ct. 10 (defendant has Sixth Amendment right under rule of *Herring v. New York* to final argument by counsel to factfinder); *Commonwealth v. Schmukler*, 22 Mass. App. Ct. 432 (defendant who testifies has right to introduce evidence of his good reputation for truthfulness and veracity); *Commonwealth v. Watts*, 22 Mass. App. Ct. 952 (when transcript of defendant's trial is lost, and record cannot be reconstructed sufficiently to evaluate his motion for required finding, he must be granted new trial).

In addition to these cases, special note should be taken of the efforts of Deputy Chief Appellate Attorney Patricia A. O'Neill in the case of *Commonwealth v. Lindsey*, 396 Mass. 840 (1986). In this case, the Supreme Judicial Court ruled against Mr. Lindsey on his claim that he was justified in carrying an unlicensed firearm in order to defend himself against an attack by an assailant. Despite this decision, Ms. O'Neill did not give up and was able to attract wide publicity for her client's plight in the news media and in the community. The result, a commutation of Mr. Lindsey's mandatory one-year sentence by the Governor and the Governor's Council, is a tribute to Ms. O'Neill.

APPENDICES

APPENDIX A

ASSIGNMENT OF MURDER CASES JULY 1, 1985 — DECEMBER 31, 1986

PRIVATE COUNSEL

TOTAL CASES177

NO. OF ATTYS130

BREAKDOWN OF COUNTIES

Barnstable 4
Berkshire 1
Bristol 7
Dukes 0
Essex11
Franklin 2
Hampden15
Hampshire 2
Middlesex26
Norfolk 3
Plymouth12
Suffolk78
Worcester16

TOTAL177

PUBLIC COUNSEL

TOTAL CASES10

NO. OF ATTYS8

BREAKDOWN OF COUNTIES

Barnstable 0
Berkshire 0
Bristol 1
Dukes 0
Essex 1
Franklin 0
Hampden 0
Hampshire 0
Middlesex 2
Norfolk 0
Plymouth 0
Suffolk 6
Worcester 0

TOTAL10

APPENDIX B

BAR ADVOCATE PROGRAMS CASELOAD AND COST DATA July 1, 1985 — June 30, 1986

<u>COUNTY</u>	<u>APPROX. NO. ATTORNEYS</u>	<u>APPROX. NO. CASES</u>	<u>TOTAL ATTY. COMPENSATION</u>	<u>APPROX. COST/ CASE</u>
Barnstable	41	5,005	\$ 150,981	\$ 30
Berkshire	25	2,027	190,886	94
Bristol	197	6,589	354,541	53
Dukes	7	205	25,050	144
Essex	83	8,856	552,888	62
Franklin	23	1,017	78,900	77
Hampden	142	8,762	309,733	35
Hampshire	55	1,777	112,584	63
Middlesex	191	17,530	570,094	32
Norfolk	30	6,004	395,296	65
Pilgrim	145	6,071	387,938	63
Worcester	<u>83</u>	<u>11,157</u>	<u>437,928</u>	<u>39</u>
TOTAL	1,022	75,000	\$3,566,819	\$ 46

APPENDIX C

ADVISORY COMMITTEE ON STANDARDS IN CRIMINAL CASES

Joseph A. Amoroso, Jr. (Cambridge)

Louis D. Coffin (New Bedford)

Frank R. Herrmann (Public Counsel)

Geraldine S. Hines (Roxbury)

Nancy Gertner, Chair (Boston)

Andrew L. Mandell (Worcester)

John H. Miller, Jr. (West Roxbury)

Eva S. Nilsen (Boston)

Stephanie Page (Public Counsel)

Martin R. Rosenthal (CPCS Training Director)

Ronald P. Locke (Public Counsel)

(Milton L. Wright [Public Counsel])

Bernard J. Whalen, Jr. (South Hadley)

APPENDIX D

ADVISORY COMMITTEE ON NON-ENGLISH SPEAKING CLIENTS

Yolanda Y. Acevedo (Public Counsel)

Nancy T. Bennett (Public Counsel)

Pamela Hattem (Public Counsel)

Richard F. Landrigan (Somerville)

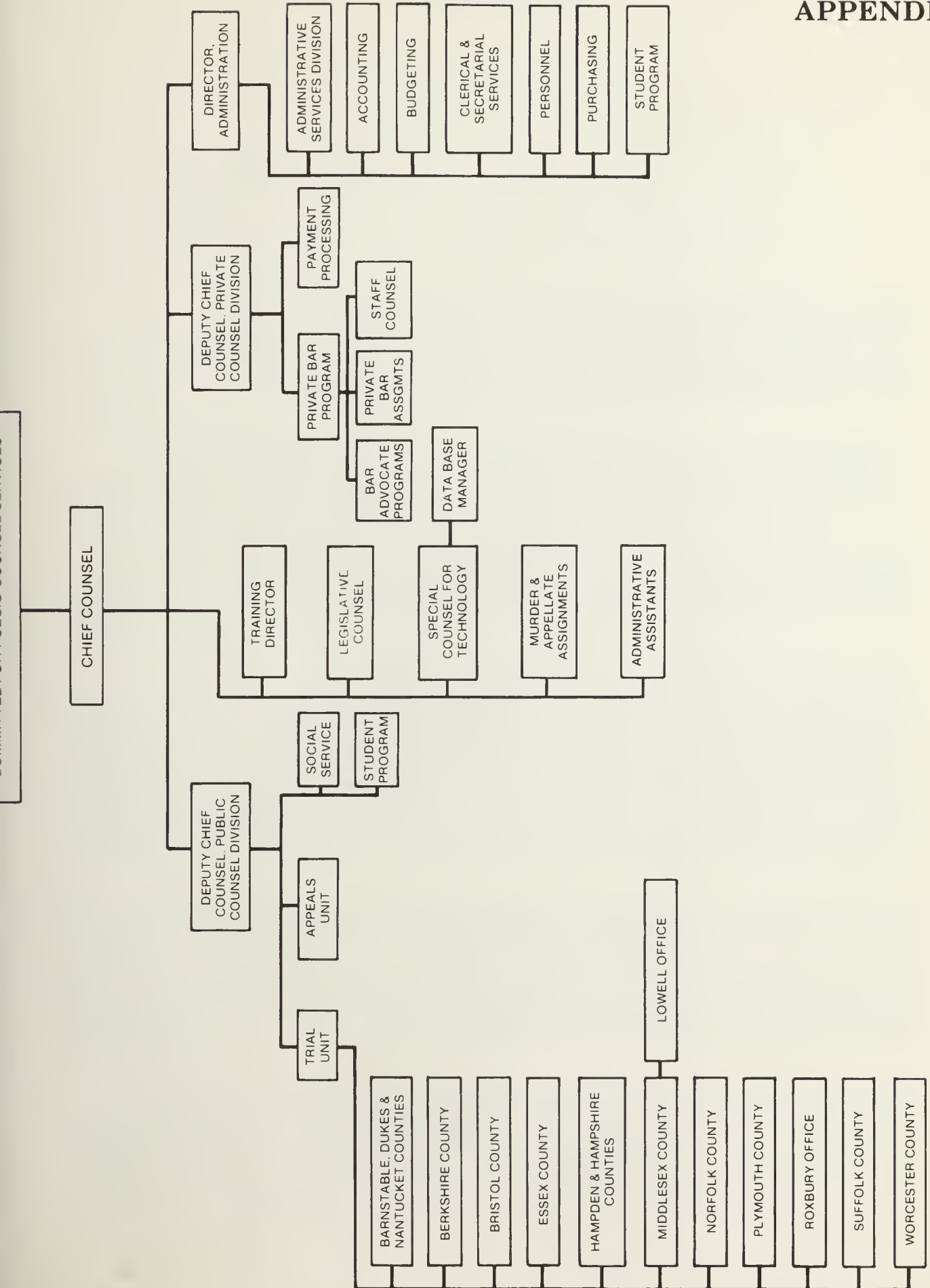
Virginia N. Lee (Boston)

Luis G. Perez (Worcester)

Salim R. Shakur (Boston)

Craig D. Smith (Public Counsel)

The Committee is co-chaired by CPCS deputy chief counsels Nancy Gist and William J. Leahy.



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APPENDIX F

July 11, 1986

BY HAND

Hon. Edward F. Hennessey
Chief Justice, Supreme Judicial Court
New Court House
Pemberton Square
Boston, Massachusetts 02108

Dear Chief Justice Hennessey:

Legal scholars have devoted a great deal of effort to understanding the broader implications of *Marbury v. Madison*, 1 Cranch 137, 2 L.Ed.60 (1803). However, recently I have had a narrower focus. The very practical and highly personal lesson I have drawn from the case is that poor Mr. Marbury was without a remedy when his judicial commission was not actually delivered. Acting accordingly, I have avoided severing important pre-judicial relationships until I had my own commission in hand.

My commission has been received and I now feel sufficiently secure to submit herewith on the day following the final monthly Committee meeting in which I will participate my resignation from the Committee for Public Services effective July 18, 1986, the last business day before my induction as a Judge of the United States District Court for the District of Massachusetts.

My delay in the effective date of my resignation from the Committee until the last possible moment is purposeful. My service on the Committee has, quite simply, been the most satisfying experience in my professional career; and I want to continue it for as long as I properly can. I very much appreciate the opportunity afforded me by the Justices of the Supreme Judicial Court to perform that service.

During the past two and one half years since my appointment, I have had the privilege to inform the Court on behalf of the Committee regarding our work. Our views, I felt, were always met with courtesy and careful consideration. Of course, the nature of the relationship is such that the Court and the Committee — while sharing the overarching interest in securing fair and equal administration of justice — are, by virtue of differing institutional roles, called upon to set differing immediate goals in securing that interest. The goal of the judiciary is the complex and multifaceted one of achieving efficient administration of the justice system. The Committee's goal is single faceted: that of ensuring that each individual litigant for whom the Committee provides counsel receives the undivided representation of his or her attorney in pursuing the sole and ultimately self-defined concerns of that client.

The Committee is aware of criticism in some quarters less sensitive than the Court that the devotion of the Committee and its attorneys to the client's narrow interest is an impediment to more expeditious resolution of cases. With all due respect, wholesale case management cannot and should not be the moving force for the Committee unless it would do individual justice for the Committee's clients. It is the genius of Chapter 211D that the potential for conflicting institutional goals which might distract those charged with securing indigent representation from single minded concern with the individual client has been prevented by the creation of an agency whose sole purpose is to serve the client's interests.

The Supreme Judicial Court was, I know, fully aware of the institutional tension and conflict caused when the appointment process through which the Committee's immediate goals are now realized was formerly vested in the judiciary itself. The resolution of that tension was Chapter 211D which vested that appointment authority in an agency distinct from the judiciary itself. The Supreme Judicial Court was, of course, instrumental in the successful passage of that legislation. The Court, for its part, has scrupulously maintained the integrity of the legislation through its fair and disinterested treatment of the Committee's work.

For its part, the Committee, which the Court constituted with appointments representing diverse and sometimes antagonistic perspectives, has maintained the integrity of the legislation by single mindedly pursuing the goal of undiluted service to our clients' interests — even though such advocacy may further burden an overtaxed system for administration of justice. No client deserves or is entitled to anything less. The basic principles were perhaps no better stated than in Lord Brougham's defense of Queen Caroline where he told the House of Lords that

there are many whom it may be needful to remind — that an advocate by the sacred duty which he owes his client knows, in the discharge of that office, but one person in the world, *that client and none other*, to save that client by all expedient means, to protect that client at all hazards and costs to all others, and among others to himself, is the highest and most unquestioned of his duties. And he must not regard the alarm, the suffering, the torment, the destruction which he brings upon any other. Nay, separating the duties of a patriot from those of an advocate, and casting them if need be to the wind, he must go on reckless of the consequences if his part it should unhappily be to involve his country in confusion for his client's protection

L.P. Stryker, *For the Defense* 361 (1947) (emphasis in original)

I very much appreciate the opportunity the Court provided me to sharpen my recognition of these goals of the advocate and to serve the administration of justice in the courts of the Commonwealth by working with the very talented and committed staff and members of the Committee for Public Counsel Services to have those goals achieved. I can think of no higher honor as a member of the bar than to have participated in such an enterprise. It is an experience which will, I think, fundamentally shape the manner in which I as a judge view the advocates who appear before me and the proper role of the courts in resolving the interests which they represent.

Sincerely,

A handwritten signature in dark ink, appearing to read "Douglas P. Woodlock". The signature is fluid and cursive, with the first name "Douglas" and last name "Woodlock" being more legible than the middle initial "P.". The signature is written on a light-colored background.

Douglas P. Woodlock

DPW/efb

APPENDIX G

COMMITTEE FOR PUBLIC COUNSEL SERVICES SUBCOMMITTEES

NOTE: THE CHAIRMAN WILL BE AN EX-OFFICIO MEMBER OF ALL SUBCOMMITTEES.

EXECUTIVE COMMITTEE

Bernstein (Chair)
Driscoll
Prince
Gertner
Duggan
Spangenberg

BUDGET & FISCAL ADMINISTRATION

Driscoll (Chair)
Spangenberg
Murray
Prince

LEGISLATION, RULES & REGULATIONS

Quinn (Chair)
Cremens
Hines
Flatley

PERSONNEL & EQUAL EMPLOYMENT OPPORTUNITY

Cremens (Chair)
Prince
Burnham
Gertner

SPECIAL SUBCOMMITTEES

APPEALS

Gertner
Murray

DISTRICT COURT REPRESENTATION (PRIVATE BAR)

Burnham (Chair)
Duggan
Spangenberg
Flatley

ROXBURY DEFENDERS COMMITTEE

Prince (Chair)
Hines
Driscoll

SUPPORT SERVICES

Hines (Chair)
Spangenberg
Cremens

TRAINING AND QUALIFICATIONS

Gertner (Chair)
Berry
Burnham
Driscoll
Murray

STANDARDS OF INDIGENCY AND AVAILABILITY OF COUNSEL

Spangenberg (Chair)
Driscoll

AUTOMATED DATA SYSTEMS

Murray (Chair)
Spangenberg

LONG-RANGE PLANNING

Cremens
Driscoll
Duggan
Gertner
Prince
Spangenberg

U. S. DEPARTMENT OF AGRICULTURE
BUREAU OF PLANT INDUSTRY
WASHINGTON, D. C.

COMMITTEE FOR PUBLIC COUNSEL SERVICES
Final Report of Expenditures
Fiscal Year 1985

3/31/87

	PRIMARY APPROPRIATION	SUBSIDIARY INTERCHANGES	SUPPLEMENTAL APPROPRIATION	FINAL APPROPRIATION	EXPENDITURE TOTAL	SURPLUS/ DEFICIENCY (*)
01 Salaries, Permanent	\$ 1,371,069.00	\$324,819.00		\$ 1,695,888.00	\$ 1,700,676.00	\$ (4,788.00)
02 Salaries, Temporary	3,233,718.00	(34,574.00)		3,199,144.00	3,200,836.00	(1,692.00)
03 Contract and Non-Employee Services:	8,985,974.00	(503,417.00)	\$1,200,000.00	9,682,557.00	9,682,532.00	25.00
Bar Advocate Programs					[4,257,109.00]	
Private Attorneys					[5,206,742.00]	
Other					[218,681.00]	
08 Electricity	8,560.00	10,550.00		19,110.00	18,150.00	960.00
10 Travel	87,312.00	(11,000.00)		76,312.00	76,844.00	(532.00)
11 Printing	6,825.00	16,800.00		23,625.00	22,854.00	771.00
12 Maintenance	4,954.00	7,778.00		12,732.00	12,427.00	305.00
13 Special Supplies and Expenses	11,299.00	(7,990.00)		3,309.00	2,805.00	504.00
14 Office and Administrative Expenses	232,995.00	87,040.00		320,035.00	318,586.00	1,449.00
15 Equipment	16,148.00	110,994.00		127,142.00	121,638.00	5,504.00
16 Rentals	371,857.00	(1,000.00)		370,857.00	372,391.00	(1,534.00)
TOTALS	\$14,330,711.00	\$ —0—	\$1,200,000.00	\$15,530,711.00	\$15,529,739.00	\$ 972.00

* Balances brought forward to Fiscal Year 1986

COMMITTEE FOR PUBLIC COUNSEL SERVICES
Interim Financial Report
Fiscal Year 1986

4/6/87

		FISCAL 1985 SURPLUS/DEFICIENCY BROUGHT FORWARD	PRIMARY APPROPRIATION	SUBSIDIARY INTERCHANGES	SUPPLEMENTAL APPROPRIATION	FINAL APPROPRIATION	PAYMENTS TO DATE	ESTIMATED OUTSTANDING OBLIGATIONS	SURPLUS/ DEFICIENCY ()
01	Salaries, Permanent	\$ (4,788.00)	\$ 1,790,201.00	\$ (10,500.00)		\$ 1,774,913.00	\$ 1,774,790.00		\$ 123.00
02	Salaries, Temporary	(1,692.00)	3,552,630.00	243,372.00		3,794,310.00	3,791,900.00		2,410.00
03	Contract and Non-Employee Services:	25.00	9,604,988.00	(360,450.00)	\$1,679,708.00	10,924,271.00	11,432,940.00	\$ 153,203.00	(661,872.00)
	Bar Advocate Programs						[4,386,756.00]		
	Private Attorneys						[6,497,994.00]		
	Other						[548,190.00]	[153,118.00]	
08	Electricity	960.00	10,669.00	5,878.00		17,507.00	17,398.00		109.00
10	Travel	(532.00)	92,769.00	(10,000.00)		82,237.00	82,939.00		(702.00)
11	Printing	771.00	23,062.00	33,700.00		57,533.00	47,346.00		10,187.00
12	Maintenance	305.00	14,059.00	14,500.00		28,864.00	33,530.00		(4,666.00)
13	Special Supplies and Expenses	504.00	19,087.00	(9,000.00)		10,591.00	8,200.00		2,391.00
14	Office and Administrative Expenses	1,449.00	280,418.00	92,500.00		374,367.00	370,540.00	174.00	3,653.00
15	Equipment	5,504.00	20,000.00		25,000.00	50,504.00	24,392.00	819.00	25,293.00*
16	Rentals	(1,534.00)	464,705.00		57,075.00	520,246.00	484,410.00		35,836.00**
	TOTALS	\$ 972.00	\$15,872,588.00	\$ — 0 —	\$1,761,783.00	\$17,635,343.00	\$ 18,068,385.00	\$ 154,196.00	\$(587,238.00)

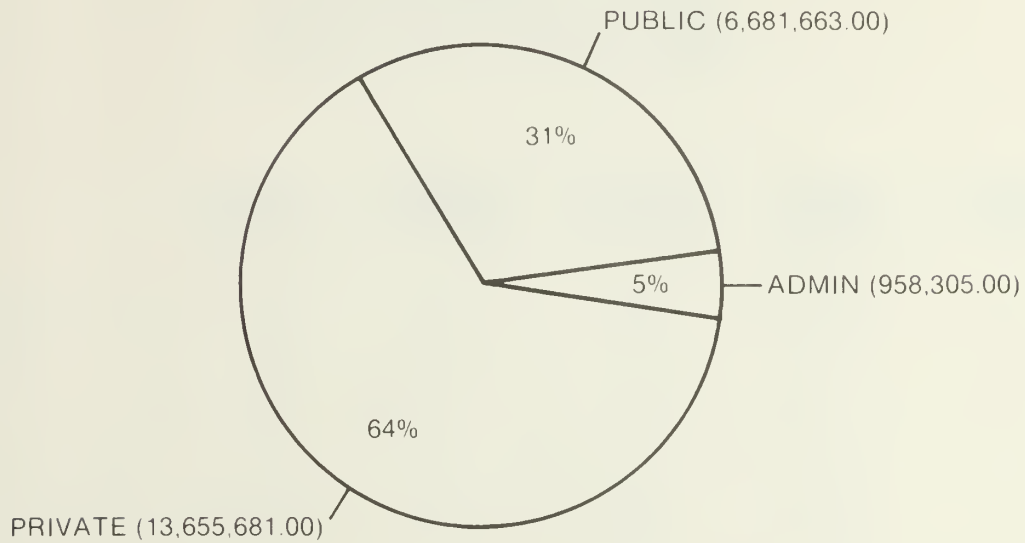
* Funds earmarked for the purchase of automated equipment to enable agency to communicate with Massachusetts Management and Accounting Reporting System.

**Funds earmarked for the payment of back rent pending approval.

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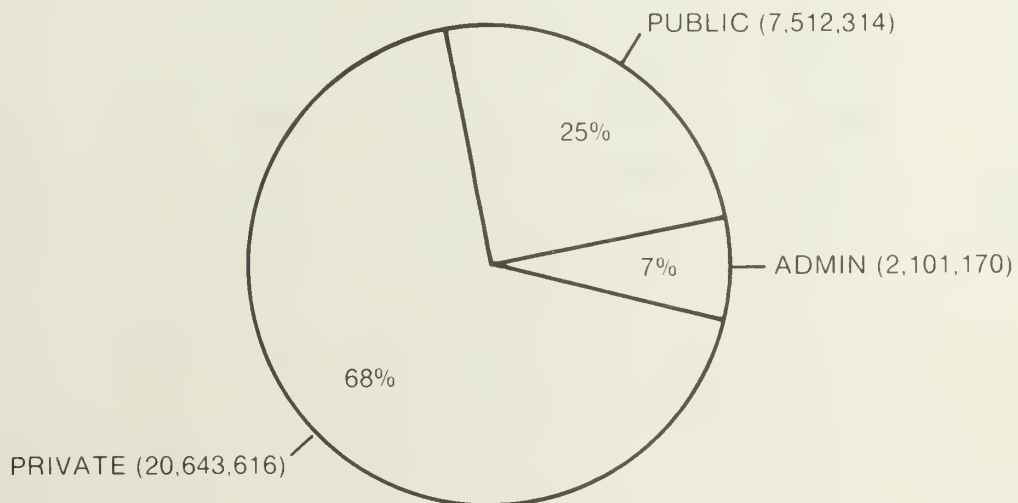
APPENDIX J

FISCAL YEAR 1987 ALLOTTED APPROPRIATION



TOTAL APPROPRIATION: 21,295,649

FISCAL YEAR 1988 TOTAL APPROPRIATION REQUESTED



TOTAL APPROPRIATION: 30,257,300

APPENDIX K

PUBLIC COUNSEL DIVISION TRIAL UNIT CASE STATISTICS JULY 1, 1985 — JUNE 30, 1986

<u>COUNTY</u>	<u>DIST. CT. DISPOSED</u>	<u>DIST. CT. JURY OF SIX DISPOSED</u>	<u>SUP. CT. DISPOSED</u>	<u>TOTAL DISPOSED</u>	<u>TOTAL JURY TRIALS</u>
BARNSTABLE	646	21	81	748	3
BERKSHIRE	363	57	41	461	13
BRISTOL	1,286	64	327	1,677	8
DUKES	15	0	2	17	0
ESSEX	333	23	222	578	11
HAMPDEN	1,310	47	438	1,795	21
HAMPSHIRE	0	0	50	50	5
MIDDLESEX	2,611	182	397	3,190	18
Cambridge	(1,498)	(143)	(279)	(1,920)	(16)
Lowell	(1,113)	(39)	(118)	(1,270)	(2)
NANTUCKET	0	1	1	2	0
NORFOLK	0	0	147	147	5
PLYMOUTH	1,301	101	105	1,507	30
SUFFOLK	1,502	24	403	1,929	50
Boston	(1,203)	(24)	(366)	(1,593)	(43)
Roxbury	(299)	(0)	(37)	(336)	(7)
WORCESTER	<u>1,488</u>	<u>165</u>	<u>434</u>	<u>2,087</u>	<u>64</u>
TOTAL	10,855	685	2,648	14,188	228





COMMITTEE FOR PUBLIC COUNSEL SERVICES
80 BOYLSTON STREET, SUITE 600
BOSTON, MA 02116

THIRD CLASS



MASS. J13.1: 987/988

✓

The Commonwealth of Massachusetts

COMMITTEE FOR PUBLIC COUNSEL SERVICES

GOVERNOR
JANUARY 1989
1987-1988
University of Massachusetts
Library

THIRD ANNUAL REPORT

1987-1988

The Commonwealth of Massachusetts

Committee For Public Counsel Services

William E. Bernstein, *Chairman*

Nancy Gertner, *Vice Chairman*

Honorable Margaret A. Burnham, *Secretary*

Teresita Alicea*

Honorable Francis X. Bellotti**

Janis M. Berry

J. Elizabeth Cremens

Mary Ann Driscoll

Edward J. Duggan

Ellen Flatley

Jose A. Espinosa**

Geraldine S. Hines

Philip X. Murray

Walter B. Prince

Honorable Robert H. Quinn

James G. Reardon*

Robert L. Spangenberg

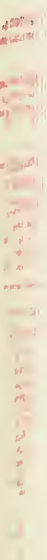
Arnold R. Rosenfeld, *Chief Counsel*

Nancy Gist, *Deputy Chief Counsel, Private Counsel Division*

William J. Leahy, *Deputy Chief Counsel, Public Counsel Division*

* Resigned March, 1987

** Appointed May, 1987





The Commonwealth of Massachusetts
Committee for Public Counsel Services

80 Baylston Street, Suite 600, Boston 02116

TELEPHONE:
(617) 482-6212



The Chief Justice and
Associate Justices
Supreme Judicial Court
New Court House
Pemberton Square
Boston, MA 02108

December 2, 1988

RE: FISCAL YEAR 1988 ANNUAL REPORT

Dear Mr. Chief Justice and Justices:

It is again my honor to submit to you the Annual Report of the Committee for Public Counsel Services.

This report describes the organization of the Committee, the procedures it has initiated for the assignment of counsel, the performance and qualification standards it has established for attorneys accepting its assignments, the training programs it has developed and sponsored, and its other efforts to improve the quality of representation of its clients. In addition, the report contains the first comprehensive data available on the assignment of cases and the expenditure of funds for indigents who are eligible for assigned counsel.

As you will see from reading this report, our task is an enormous one. Through the combined efforts of our full-time staff and the private bar, we have been equal to this task and we are continuously working toward our goal of improving the quality of representation provided through the Committee.

This is the last report I will submit to you as Chairman of the Committee, a post I have held for the past two years. It has been an honor for me to preside over the highly qualified members you have appointed to this Committee who have given enormous time and effort without compensation and to have had the opportunity to work with the dedicated full-time staff and members of the private bar who have achieved so much in their endeavors to give true meaning to the right to effective assistance of counsel.

Sincerely,

William E. Bernstein
William E. Bernstein
Chairman

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I. INTRODUCTION

This is the third annual report of the Committee for Public Counsel Services, which was established pursuant to Chapter 673 of the Acts of 1983, and which became operational on July 1, 1984. It is the Committee's mandate to:

"plan, oversee, and coordinate the delivery of criminal and certain noncriminal legal services by all salaried public counsel, bar advocate and other assigned counsel programs, and private attorneys serving on a per case basis."

(Massachusetts General Laws, Chapter 211D, Section 1)

The efforts and accomplishments of the Committee for Public Counsel Services from July, 1984, through 1986 were described in its first two annual reports. This third report will describe the organization of the Committee; the procedures it has initiated for the assignment of counsel; the standards it has established for the qualification and quality of performance by lawyers accepting its assignments; the training programs it has developed and sponsored; and the Committee's other efforts to improve the quality of representation of its clients and the resources and support available to the attorneys who represent them.

This report covers the period January 1, 1987, through June 30, 1988.

II. ORGANIZATION OF THE COMMITTEE

(See Appendix A)

The Committee for Public Counsel Services consists of fifteen members appointed to three-year terms by the Supreme Judicial Court of Massachusetts. It is the responsibility of the Committee to select the Chief Counsel and the two Deputy Chief Counsel, and to establish policies to carry out its mandate. The Committee generally meets once a month and at such other times, as necessary, to carry out its business. Its agenda is published one week in advance of the meeting, which is open to the public. The Committee elects officers annually. During the time covered by this report, Attorney William E. Bernstein of Worcester has served as the Chairman of the Committee.

The Chief Counsel is the chief executive officer of the Committee and is responsible for carrying out its day-to-day functions. Attorney Arnold R. Rosenfeld has been the Chief Counsel of the Committee since July 1, 1984. Committee operations are divided as follows:

- A. **Public Counsel Division**, headed by Deputy Chief Counsel William J. Leahy, consists of the full-time staff of the Trial Unit and the Appeals Unit.
 1. The Trial Unit consists of 13 trial offices covering the 13 counties. The largest office, which is in Boston, consists of 22 attorneys who represent clients throughout most of Suffolk County. The smallest and newest office, consisting of two attorneys, is in Northampton, covering Hampshire and Franklin Counties. There are a total of 108 attorneys, 10 investigators and 5 social workers serving in the Trial Unit. During fiscal year 1988, the Trial Unit opened 14,930 cases and closed 13,347 cases, all of which were felonies. (See Appendix B for a summary by county.) During the fiscal year, Public Counsel Division attorneys completed 285 jury trials. Of this total, 173 (60.7%) resulted in verdicts favorable to the defendant, 102 (35.8%) were unfavorable, and 10 (3.5%) ended in a hung jury or other form of mistrial. (See Appendix C for an office-by-office breakdown of jury trial frequency and results.)
 2. The Appeals Unit, which works out of the Boston office, consists of a full-time attorney staff under the direction of Chief Appellate Attorney Brownlow M. Speer. The appellate attorneys review transcripts, submit briefs and argue cases before the Appeals Court, the Supreme Judicial Court, and the federal courts, where appropriate. This unit handles all cases appealed from the Trial Unit (except cases where a conflict of interest exists) and such other matters as may be assigned to them by the Chief Counsel. During fiscal year 1988, the Appeals Unit submitted 93 briefs on behalf of clients.

- B. **The Private Counsel Division**, headed by Deputy Chief Counsel Nancy Gist, oversees the private counsel assignment, payment and monitoring systems as well as the administration of the Indigent Court Costs Fund.

1. Private Counsel Assignment System

- a. The Bar Advocate Program in Each County — The Committee has contracted with the county bar associations to establish a system by which attorneys are assigned to accept criminal cases in the district and superior courts. All of these attorneys must meet qualification and performance standards established by the Committee to be eligible to participate in the Bar Advocate Program. (Appendix D contains a summary of assignments by county.)
- b. Noncriminal Case Assignments — Noncriminal cases are assigned to attorneys by judges from lists of attorneys who have completed Committee training programs. (Appendix E contains a summary of these assignments by county.)

2. Private Attorney Bill Payment

All attorneys who accept Committee assignments are paid on an hourly basis for work performed. The payment is \$25 per hour for out-of-court work and \$35 per hour for in-court work. Compensation for some noncriminal cases (care and protection cases) is at a rate of \$35 per hour for all work; the Committee pays \$50 per hour for all work on murder assignments.

All assignments are identified on a Notice of Assignment of Counsel (NAC) form and submitted to the Committee. Bills are submitted at the close of the case or at the end of the fiscal year for payment. During fiscal year 1988, the Committee processed 142,039 NAC's and 146,302 bills, and paid \$21,284,108.15 to private counsel for their work on cases. Regina M. Dembowski, Director of the Private Attorney Payment Department, and Ela Marinella, Assistant Director, oversee a staff of 25.

3. Monitoring

The Private Counsel Division also performs a variety of monitoring functions under the auspices of two subcommittees of the Committee. These activities are coordinated by Helen Fremont, Staff Counsel.

- a. Billing — Routine audits of bills are conducted by staff, and any apparent overcharges by attorneys are brought before the Executive Committee. The Committee collected \$32,215.95 in overcharges by attorneys; four attorneys have been disciplined, and two attorneys have been referred to the Board of Bar Overseers for further investigation.
- b. Performance — Oral and written complaints regarding attorney performance are investigated by the bar advocates, the Committee staff, or hired counsel. Recommendations to, and hearings held by, the Training and Qualifications Subcommittee have resulted in disciplinary action of six attorneys during the past year.

4. Indigent Court Costs Fund

Under a change in the state budget for fiscal year 1987, the Committee was designated as the administrator of the Indigent Court Costs Fund (established under G.L. c. 261, §27A-G). During fiscal year 1988, a total of \$1,394,000 was allocated for indigent court costs. (Appendix F contains a listing of expenditures in this area for fiscal year 1988.)

- C. **Administrative Services Division**, headed by Director of Administration Joan G. Paino, consists of the Accounting, Personnel, Purchasing, Office Support, and Budget and Facilities Management Units. Each of these units provides support for the full-time staff of both the Public and Private Counsel Division.

The Accounting, Purchasing, and Facilities Management Units are under the overall supervision of Margaret C. McGillivray.

The Accounting Unit prepares and maintains the records of expenditures for all payroll matters and financial transactions.

The Purchasing Unit handles the purchases of all equipment, library resources, and other materials for the agency and maintains and monitors the inventory control system for equipment and library resources.

The Facilities Management Unit handles the acquisition of office space and related matters, the maintenance of office facilities and the procurement of telecommunications systems.

The Budget and Personnel Units are under the direction of Maura J. Mellen.

The Budget Unit prepares the annual and supplementary budget requests, variance reports, projections and such other financial planning tasks, as required.

The Personnel Unit conducts orientation of new staff, maintains all personnel records, administers the benefits program, and produces regular personnel reports.

The Office Support Unit, headed by Cathy Madison, establishes criteria for secretarial and administrative jobs, recruits and conducts interviews, assists in selection of nonlegal staff, coordinates evaluation of secretarial and clerical staff, develops and conducts training programs for the secretarial and clerical staff, and provides technical assistance to all offices on computer operations and administrative support for the statistics and case tracking system.

D. **Special Divisions.** There are several other divisions, all of which report directly to the Chief Counsel. These are:

1. Training Unit, headed by Director of Training Martin R. Rosenthal, who is responsible for the development and presentation of all Committee training programs for both the Public and Private Counsel Divisions. A detailed description of training accomplishments can be found in Section V of this report.
2. Legislative Unit, headed by Legislative Counsel Lisa M. Hewitt, who is responsible for legislative liaison on all budget and legislative matters. In addition, Ms. Hewitt coordinates media relations for the Committee.
3. Technology Unit, headed by Special Counsel for Technology Richard Zorza, who oversees the planning and operations of the computer system, which is headed by Database Manager Bryan Shumsky. Computer operations include the NAC and bill processing system, a public counsel record system, word processing operations for the entire office and a litigation support system for the Trial Unit.
4. Murder and Appellate Assignments are handled separately from all other assignments and are coordinated by Legal Assistant Denise A. Simonini.

III. PROCEDURES FOR THE ASSIGNMENT OF COUNSEL

The Committee "shall establish, supervise and maintain a system for the appointment or assignment of counsel at any stage of a proceeding, either criminal or noncriminal in nature A justice or associate justice shall assign a case to the committee" (Massachusetts General Laws, Chapter 211D, Section 5)

This section of the statute provides for a fundamental change in the method of assignment of counsel in the Commonwealth. Prior to July 1, 1984, judges assigned cases directly to attorneys of their choice; under the new system, however, assignments are to be made to attorneys specified by the Committee. Thus, attorneys are no longer dependent upon the willingness of a justice or associate justice to assign them cases. This enables attorneys to fulfill their ethical obligation of zealous advocacy to their client, without fear of being denied assignments in the future.

A. Criminal Cases

In the district courts, the probable cause felony cases (and some concurrent jurisdiction felony cases) are assigned to attorneys from the Public Counsel Division unless there is a conflict of interest. Almost all other district court cases are assigned through the Bar Advocate Program. Each Bar Advocate Program maintains a list of qualified attorneys who are scheduled for assignments in the various district and superior courts within the counties. In order to qualify to represent clients in the district court, an attorney must agree to abide by the Committee's performance guidelines (see Section IV) and must have completed or been a faculty member at a Committee-authorized training program (see Section V) or have received a waiver based upon trial experience.

Qualification for the superior court list also requires an agreement to abide by the performance guidelines and the completion of at least six jury trials in either the district court jury of six or in the superior court. The Bar Advocate Programs coordinate assignments from these lists. While the majority of superior court criminal cases are assigned to the Public Counsel Division, there were 4,255 assignments to private attorneys in fiscal year 1988.

Although murder cases originate in the district court and are tried in the superior court, the assignment of these cases are handled directly by the Chief Counsel. (See G.L. c.211D, §8.) Attorneys selected for the murder list must have completed at least ten jury trials with five of these involving life felonies and must be familiar with forensic evidence. During fiscal year 1988, there were 162 attorneys on the Committee's panel of attorneys eligible to receive assignments in murder cases; 165 assignments were made with the largest number of assignments in Suffolk County. (See Appendix G for a summary of murder case assignments by county.)

B. Noncriminal Cases

The noncriminal cases for which counsel must be assigned include (a) family-related matters such as care and protection, CHINS (children in need of services), adoption, guardianships, foster care review; (b) mental health-related cases including commitments, *Rogers* (involuntary administration of antipsychotic medication), *Spring and Saikewicz* (removal of life support systems or terminate treatment); (c) sexually dangerous person cases; and (d) minors petitioning under c.112, §12S.

In each of these areas, the Committee has promulgated performance guidelines and has required attorneys wishing to accept such assignments to undergo training programs prior to being eligible for these assignments. Lists of qualified attorneys are maintained and updated by the Committee and provided to the justices making the assignments.

The Committee also awarded a contract for the establishment of a Family Law Advocacy Project to be headed by Attorney Jinanne S.J. Elder of Boston. The project, which is expected to last one year, will provide assistance to the Committee in designing and establishing systems, resources, and networks for the Committee's family law-related cases including care and protection, CHINS, guardianships and other cases involving termination of parental rights.

The project has two main objectives: first, to provide technical assistance to attorneys assigned these cases by means of the development of mentor systems, training programs, and performance monitoring; and second, to develop a resource bank of materials including casenotes, model pleadings and briefs, and other back-up resources.

Attorney Elder will be assisted by Attorney Anthony J. DeMarco of the North Shore Children's Law Project, as well as by the Massachusetts Law Reform Institute and the Developmental Disabilities Law Center. The project will be headquartered at Suite 910, 80 Boylston Street, Boston, MA 02116.

The Committee works in conjunction with the Mental Health Legal Advisors Committee in the mental health-related area. From its inception, the Committee has relied on the Women's Bar Association and the National Lawyers Guild, and particularly Attorney Jamie A. Sabino, to coordinate the assignments in c.112, §12S cases.

C. Appellate Cases

While the statute calls for the Public Counsel Division to handle all appellate assignments, as a practical matter this is impossible due to budget constraints and conflict of interest cases. Thus,

while the Public Counsel Division Appeals Unit handles the cases appealed from the Trial Unit, and selected other cases, about half of the post-conviction matters assigned to the Committee are assigned to private counsel.

Private attorneys accepting assignments on appellate cases must abide by the standards and take the required training program unless waived. Waivers are based upon previous submission of at least three briefs to the Appeals Court or Supreme Judicial Court. During fiscal year 1988, 137 appellate cases were assigned to private attorneys.

IV. STANDARDS

"The committee shall establish standards for the public counsel division and the private counsel division . . ." (Massachusetts General Laws, Chapter 211D, Section 9)

"The committee shall monitor and evaluate compliance with the standards and the performance of counsel in its divisions in order to insure competent representation of defendants in all courts of the commonwealth . . ." (Massachusetts General Laws, Chapter 211D, Section 10)

During the first two years, the Committee established standards in the following areas.

- A. Appellate Representation
- B. Civil Commitment Cases
- C. Guardianship Cases
- D. Parents and Children in State Intervention and Termination of Parental Rights Cases

During the past year, the Committee has adopted standards in G.L. c.112, §12S cases and guidelines for criminal cases. A summary of the standards for criminal cases follows.

PERFORMANCE GUIDELINES GOVERNING REPRESENTATION OF INDIGENTS IN CRIMINAL CASES

Performance Guidelines Governing Representation of Indigents in Criminal Cases have been developed by the Committee for Public Counsel Services for use in evaluating, supervising, and training lawyers assigned by the Committee and the courts to represent indigents. They may also be utilized by the attorneys as a basis on which they can develop a plan for defending their clients. They are not intended to be the basis for measuring what is inadequate representation, a standard that has been established by the appellate courts.

The Guidelines are broken down into eight areas:

1. General Principles of Representation — defines the role of defense counsel and the general duties of defense counsel, specifying which decisions should be made by the client and which by counsel.
2. Preliminary Proceedings and Preparation — describes counsel's responsibilities at the arraignment and bail hearing, as well as efforts that should be taken at preliminary discovery.
3. Probable Cause hearing — deals with what the attorney should be seeking from the probable cause hearing.
4. Pretrial Preparation — describes counsel's responsibility in investigation, pretrial conference, discovery, and legal research.
5. Dispositions by Plea or Admission — specifies counsel's advice to the client relative to a plea or admission, insuring that the client fully understands the ramifications of a plea or admission and the requirement that such decision be voluntary; discusses what counsel should do to insure that any agreement is followed.

6. General Trial Preparation — describes the various steps that should be considered in preparation for actual trial, and what materials should be accessible at the time of trial; how to insure that the record is properly and effectively protected; various considerations for trial procedures, such as use of voir dire in jury selection, challenges, opening statements, confronting the prosecution case, whether and how to present a defense case, closing argument, and preparation of jury instructions and objections to them.
7. Sentencing — covers the various steps that can be taken in preparation for and presentation of the sentencing stage of the proceedings.
8. Post-Trial Proceedings — outlines counsel's advice to the client as to rights of appeal from a trial de novo, to the Appeals Court, or of the sentence, and the steps necessary to preserve rights in each of these instances.

The Guidelines were approved by the Committee for Public Counsel Services on March 5, 1987. The Guidelines were amended to reflect comments submitted in writing, as well as at public hearings by various individuals and organizations. The Guidelines are now in effect and have been incorporated by the Committee as part of its contracts with the Bar Advocate Programs and its application for assignments. Copies of the full Guidelines can be obtained by writing or calling Elizabeth Ann Linfield at the Committee's office in Boston at (617) 482-6212.

The Committee is now working on guidelines for juvenile cases, which it expects to promulgate this year.

V. TRAINING PROGRAMS

The Committee has continued and expanded upon its previous efforts to provide a comprehensive training program for the attorneys serving in the Public and Private Counsel Divisions. Many training programs are mandatory, unless waived, and all are provided at no cost to the attorneys, who must agree to accept assignments in the pertinent area for at least one year.

Among the most significant programs during the past year are the following:

A. Criminal Advocacy Programs

1. District Court Program for Bar Advocates — this two-day program consisting of lectures, demonstrations, and participatory exercises is designed to teach the basic skills necessary for representation in the district court bench sessions. During this fiscal year, five of these programs were offered and were attended by 298 attorneys. The program is cosponsored with the Bar Advocate Programs and Massachusetts Continuing Legal Education, Inc.
2. Public Counsel Division New Attorney Basic Program — an intensive three-week program of lectures, demonstrations, trial skill exercises with both live and videotaped feedback, concluding with a mock trial and critique. This program is conducted in September each year with usually eight to twelve new staff attorneys participating.
3. The One-Trial Training and "Walk Through a Jury Trial" Training — a two-part training program coordinated by Assistant Training Director Nancy T. Bennett, a trial attorney on special assignment. This program was specifically designed for Essex and Hampden Counties, where the traditional trial de novo system has been eliminated on a two-year trial basis. The first part, cosponsored by Bar Advocates and the Massachusetts Bar Association, analyzes options and strategies available to defense counsel under the new statute. The second program offers training and critique in the basics of jury trials — jury selection, cross-examination, opening and closing arguments, and requests for instructions. These programs, which were taught by a combined public-private local faculty, were mandatory for both public and private attorneys in the two counties. One

hundred seventeen attorneys attended, and the programs are being given again in the fall of 1988. The jury trial training program has also been disseminated statewide (see D, *infra*).

4. Advanced Training — a program in forensics was designed and presented by Attorneys Bruce R. Bono and Nancy T. Bennett of the Public Counsel Division for both public and private attorneys. A special session on defense of murder cases, presented by the Massachusetts Academy of Trial Attorneys, was made available to all attorneys on the murder list. Eleven members of the Public Counsel Division staff attended the National College of Criminal Defense Lawyers intensive two-week program in Georgia, and eight attorney supervisors and managers attended the National Legal Aid and Defender Association (NLADA) Management Training Program in San Diego and in New Orleans. Several staff members, administrators, and Committee members attended the annual NLADA conference held in Washington, D.C. and Miami.

In addition, during this period, two annual training conferences were held, one in Westford and the other in Marlborough, attended by all Public Counsel Division attorneys and over 100 Private Counsel Division attorneys. These conferences offered numerous programs on a variety of subjects, including defense of child abuse cases, identification defenses, forensics (with emphasis on DNA identification), defense of drunk driving cases, and jury selection law and techniques.

5. Post Conviction and Appellate Programs — a one-day program covering a range of topics such as issue identification, brief organization and preparation, oral argument, dealing with the client, and related Rule 30 options in an appellate case. This program is mandatory for attorneys wishing to be assigned to post-conviction cases. During this fiscal year, two programs were offered and nineteen attorneys participated.

B. Noncriminal Advocacy Training

1. Care and Protection Training Program — presented in conjunction with Massachusetts Continuing Legal Education and designed by the Committee in consultation with its Children and Family Advisory Committee for lawyers accepting assignments in care and protection and CHINS cases, this two-day program consisted of lectures on special aspects of the law of children and parents in transition, and the options available to attorneys representing them, with a special emphasis on trial skill development including participatory exercises. During this fiscal year, four programs were offered and 92 attorneys participated.
2. Judicial Consent for Minors, C.112, §12S Cases — a two-hour training session focused on the procedural aspects of providing legal assistance to minors petitioning under c.112, §12S through judicial, as opposed to parental, consent. This program was cosponsored and taught by panelists from the Women's Bar Association and the National Lawyers Guild. During this fiscal year, twelve programs were offered and 55 attorneys attended.
3. Juvenile Delinquency Training — a one-day program required for attorneys handling delinquency assignments, examining the legal, ethical, and practical problems of representation in the juvenile courts and juvenile sessions of the district courts. This program is cosponsored with Massachusetts Continuing Legal Education, Inc. During this fiscal year, four training programs were offered and attended by 98 attorneys.
4. Mental Health Training Program — a two-day, ten-hour session covering the procedures in civil commitment, forced medication, and guardianship cases, cosponsored and conducted by the Mental Health Legal Advisors Committee. During the 1988 fiscal year, two programs were offered and attended by 75 attorneys.

C. Nonlegal Staff Training

Many of the nonlegal staff also undertook training programs during this period. The administrative assistants from each of the Public Counsel offices attended a week-long program on the new public counsel statistics and recordkeeping system. Management training offered by the Commonwealth's Department of Personnel Administration was attended by eleven staff members. Investigators were offered special programs at both annual conferences.

Database Manager Bryan Shumsky and Special Counsel for Technology Richard Zorza attended and gave presentations at the NLADA National Computer Conference; they have also conducted staff training on the computer systems.

D. Advanced Training

During the past year, the Committee's Training Unit has been videotaping nearly all training programs it has conducted or sponsored. As a result, an extensive compilation of videotapes has been developed at the Committee's main office in Boston. In order to make these tapes more accessible, the Training Unit selected five tapes and accompanying written training materials for distribution to all public counsel and bar advocate offices. This project was initiated in May, 1988, with invaluable coordination by Pamela Metzger. The tapes and materials currently in statewide circulation are:

1. Walk Through a Jury Trial
2. AIDS: The Defense Attorney Response
3. Cross-Examination Systems
4. Single Justice Practice
5. Identification and Alibi Cases

The Training Unit is now preparing a second set of tapes and materials for distribution before the end of 1988.

VI. OTHER MAJOR INITIATIVES

A. Affirmative Litigation Program — *Committee for Public Counsel Services v. The First Justice of the Dorchester District Court, et al*

In February, 1988, as a result of overcrowded conditions in the jail lockup area, the first justice of the Dorchester District Court placed a limit on the number of defendants who could be held there at any one time. This resulted in a delay in arraignments of clients of the Committee. The Committee therefore filed suit, under G.L. c.211, §3, the general superintendence statute, asking for relief from a single justice of the Supreme Judicial Court. The Committee expanded its suit, citing the unsafe and unsanitary conditions in the Dorchester court and alleging a deprivation of the right to due process and the right to fair and adequate representation.

In a landmark decision, the single justice found that the Committee had standing to pursue, preserve and protect the rights of defendants; he further held that the conditions in the courthouse constituted "an emergency of the gravest urgency," comparing the lockup area to the "Black Hole of Calcutta." The single justice ordered that the city and court officials renovate the courthouse; he further ordered that arraignments be held in accordance with the law. Renovations to the court are now underway.

The publicity surrounding this case brought public and media attention to the stalled \$300 million Court Facilities Bill, which subsequently was passed by the legislature and signed into law by the Governor.

B. Legislative Program

Through the efforts of its Legislative Counsel Lisa M. Hewitt, the Committee achieved a major portion of its legislative agenda during the past year.

First and foremost, the Committee's budget was approved at requested levels, enabling it to carry out its responsibilities of compensating private attorneys on a timely basis. In addition, legislative approval was achieved for a salary structure increase for the Public Counsel Division attorneys for the first time in five years.

Second, several parts of the Committee's legislative program were enacted into law. Among those were: (1) an increase in the threshold amounts for felony jurisdiction from \$100 to \$250 in larceny and receiving stolen property cases; (2) regulating the nonpayment of fines, and (3) clarifying the right to individual voir dire of jurors.

Third, the Committee continued in its leadership in opposing certain bills which it considered detrimental to the rights of its clients and other individuals. Among those were the presumptive sentencing bill, proposed state RICO legislation, and new laws making it easier to transfer juveniles to adult jurisdiction.

C. Awards

The Committee initiated a series of awards to demonstrate its recognition of outstanding service to its clients. These awards are:



Honorable Patricia McGovern, recipient of the "Legislator of the Year" award at the Committee's April, 1988, annual conference.

1. "Legislator of the Year" given to a member of the state legislature whose actions and support of the Committee's program and clients were outstanding. The first award was presented to Representative Angelo M. Scaccia of Boston, Vice Chairman of the House Committee on Ways and Means, and the second was presented to Senator Patricia McGovern, Chairperson of the Senate Committee on Ways and Means.

2. "The Edward J. Duggan Award for Outstanding Service" given to a public and private division attorney. This new award is named for Edward J. Duggan, who began his work with the defense of the indigent in 1940 as a member of the Voluntary Defenders Committee, a group of private attorneys who offered free legal services to the poor.



Edward J. Duggan (center) with Brownlow M. Speer (left) and Louis D. Coffin (right) at the Committee's April, 1988, annual conference.

Mr. Duggan subsequently coauthored the legislation establishing the Massachusetts Defenders Committee in 1960, served as a member of that Committee for 24 years as well as two terms as its Chairman, and has been a member of the Committee for Public Counsel Services since its inception, including serving as interim chairman of the Committee during the transition period in 1984. The criteria for the award is to the public and private attorney who best represent the zealous advocacy which Ed Duggan established as the principle behind defense of indigents in Massachusetts during his 47 years of service. The first "Duggan" awards were presented to Brownlow M. Speer, the Chief Appellate Attorney of the Public Counsel Division, and Louis D. Coffin of New Bedford, the President of the Bristol County Bar Advocates, Inc.

3. "Twenty-Year Service" given by the Committee in recognition of employees who had served the Massachusetts Defenders Committee/Committee for Public Counsel Services for more than twenty years. This award was presented to:

Bernard E. Bradley, Jr., Esquire, Boston

Carney D. Daniels, Esquire, Lowell

Robert F. Fandel, Esquire, Brockton

Armand G. Goyette, New Bedford

Charles G. Kurzon, Esquire, Cambridge

John J. Monahan, Worcester

Joan G. Paino, Boston

Edgar A. Rimbold, Esquire, Barnstable

David M. Skeels, Esquire, Cambridge

Germaine I. Silva, New Bedford

Robert S. Szukala, Pittsfield

D. Northampton Office

In May, 1988, the Committee opened a new Public Counsel Division office in Northampton to serve Hampshire and Franklin Counties, the only counties not previously served by the Public Counsel Division. Senior attorney **Alan M. Rubin** of the Boston office was selected to be the attorney-in-charge of the new office.

E. New Attorneys-in-Charge, Public Counsel Division

1. **Rita H. Scales** was named attorney-in-charge of the Berkshire County office in Pittsfield. She had been acting attorney-in-charge.
2. **Lawrence J. McGuire** was named attorney-in-charge of the Essex County office, which was moved from Lynn to Salem. He replaced Joseph I. Dever, who was appointed to a district court judgeship by the Governor.
3. **Anne C. Goldbach** was named attorney-in-charge of the Boston office, the Committee's largest trial office. Previously, she had been the assistant attorney-in-charge of the Roxbury office.

APPENDICES

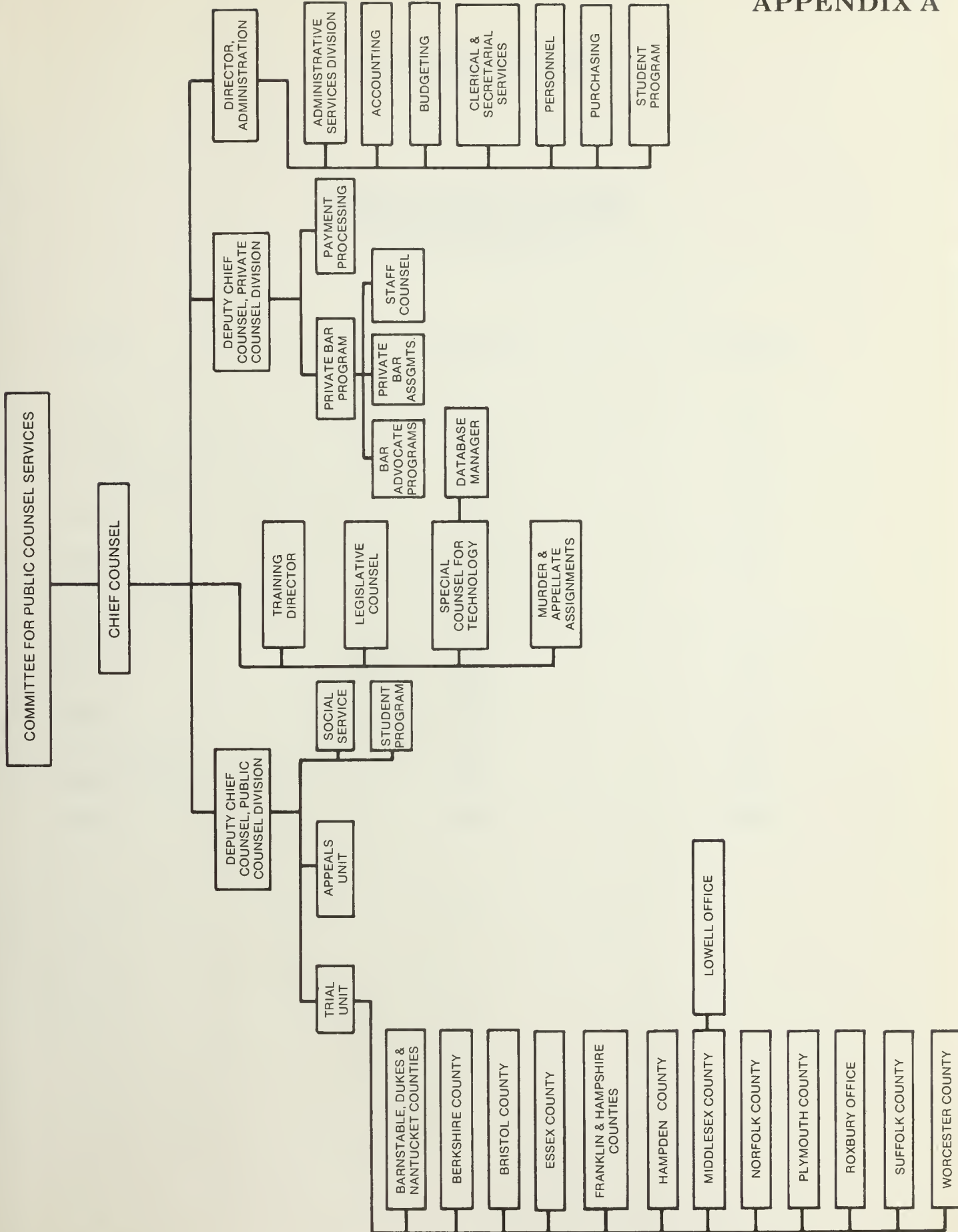
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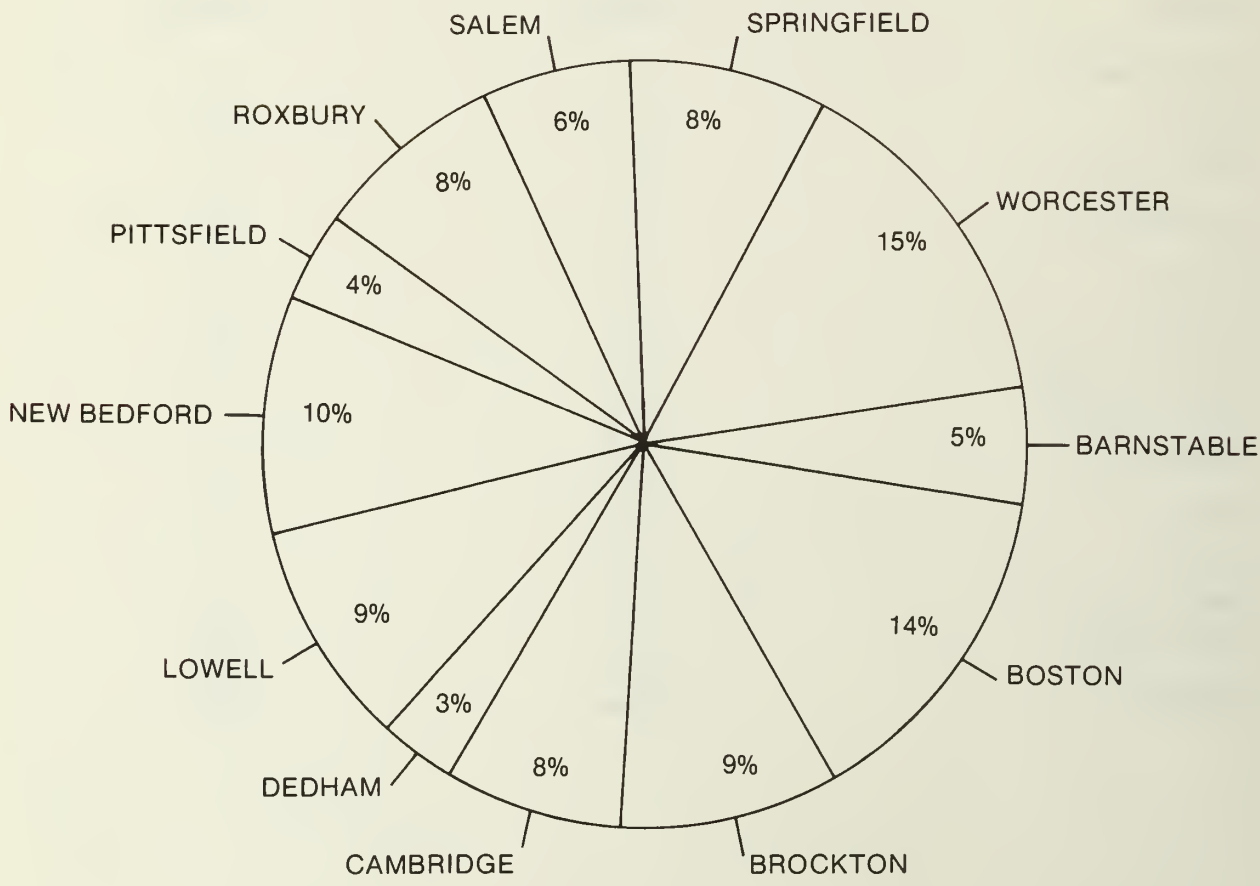
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APPENDIX B

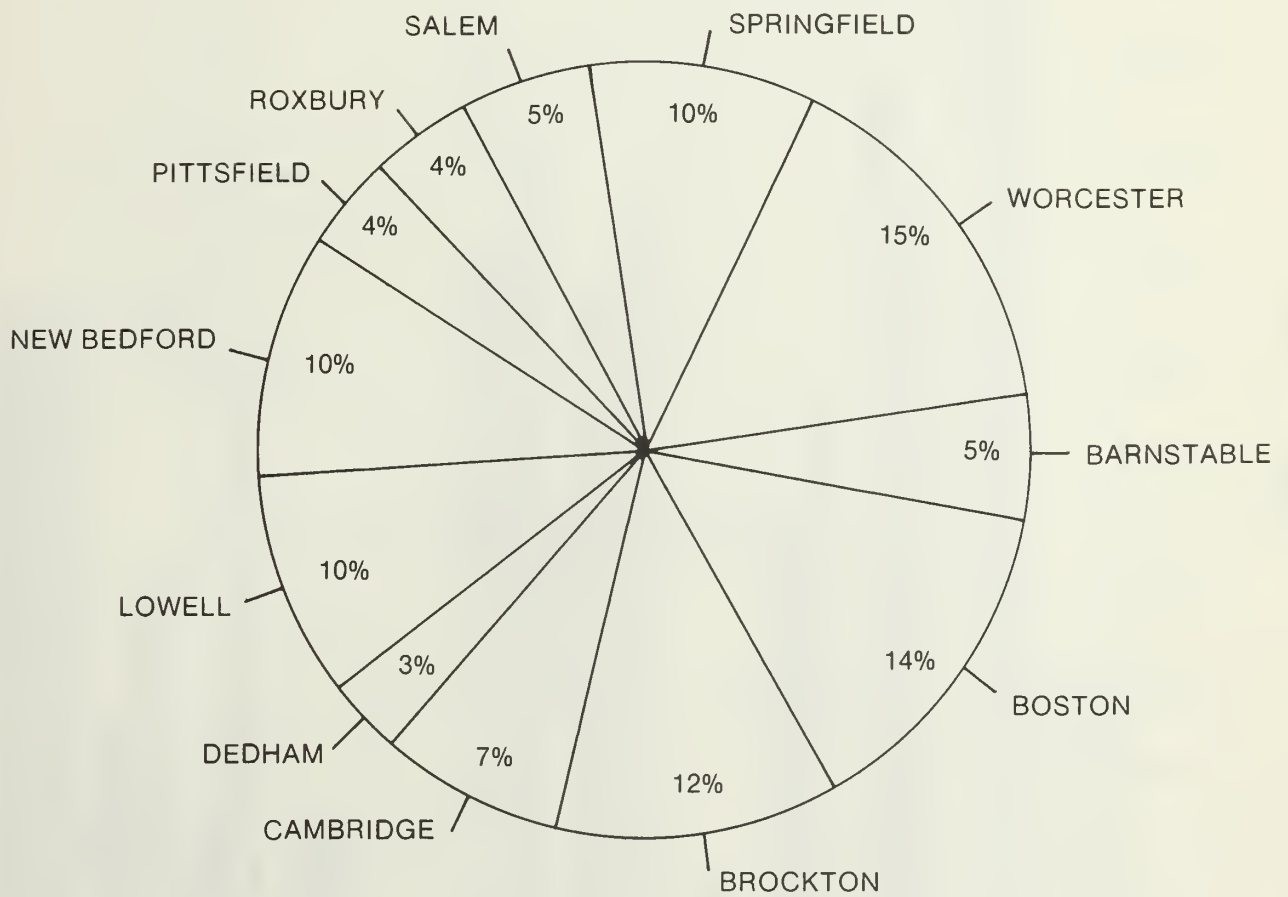
PUBLIC COUNSEL DIVISION CASES OPENED AND CLOSED FISCAL YEAR 1988

<u>OFFICE</u>	<u>OPENED</u>	<u>CLOSED</u>
BARNSTABLE	702	711
BOSTON	2,117	1,867
BROCKTON	1,405	1,617
CAMBRIDGE	1,138	981
DEDHAM	464	405
LOWELL	1,416	1,295
NEW BEDFORD	1,519	1,367
NORTHAMPTON	13	4
PITTSFIELD	564	504
ROXBURY	1,220	565
SALEM	890	687
SPRINGFIELD	1,264	1,280
WORCESTER	<u>2,218</u>	<u>2,064</u>
TOTALS	14,930	13,347

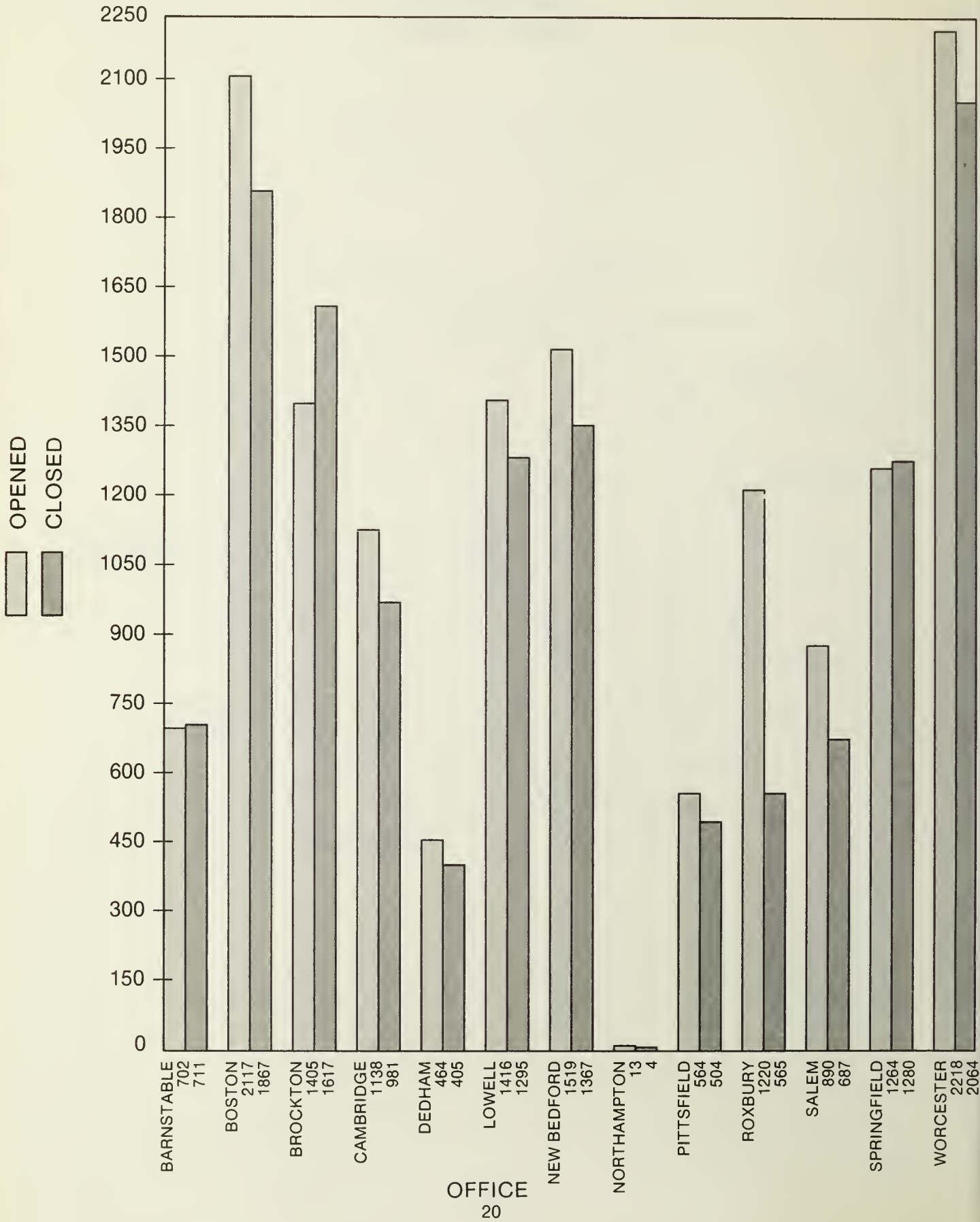
**PUBLIC COUNSEL DIVISION
CASES OPENED
FISCAL YEAR 1988**



**PUBLIC COUNSEL DIVISION
CASES CLOSED
FISCAL YEAR 1988**



PUBLIC COUNSEL DIVISION
TRIAL UNIT
FISCAL YEAR 1988



APPENDIX C

PUBLIC COUNSEL DIVISION JURY TRIAL FREQUENCY FISCAL YEAR 1988

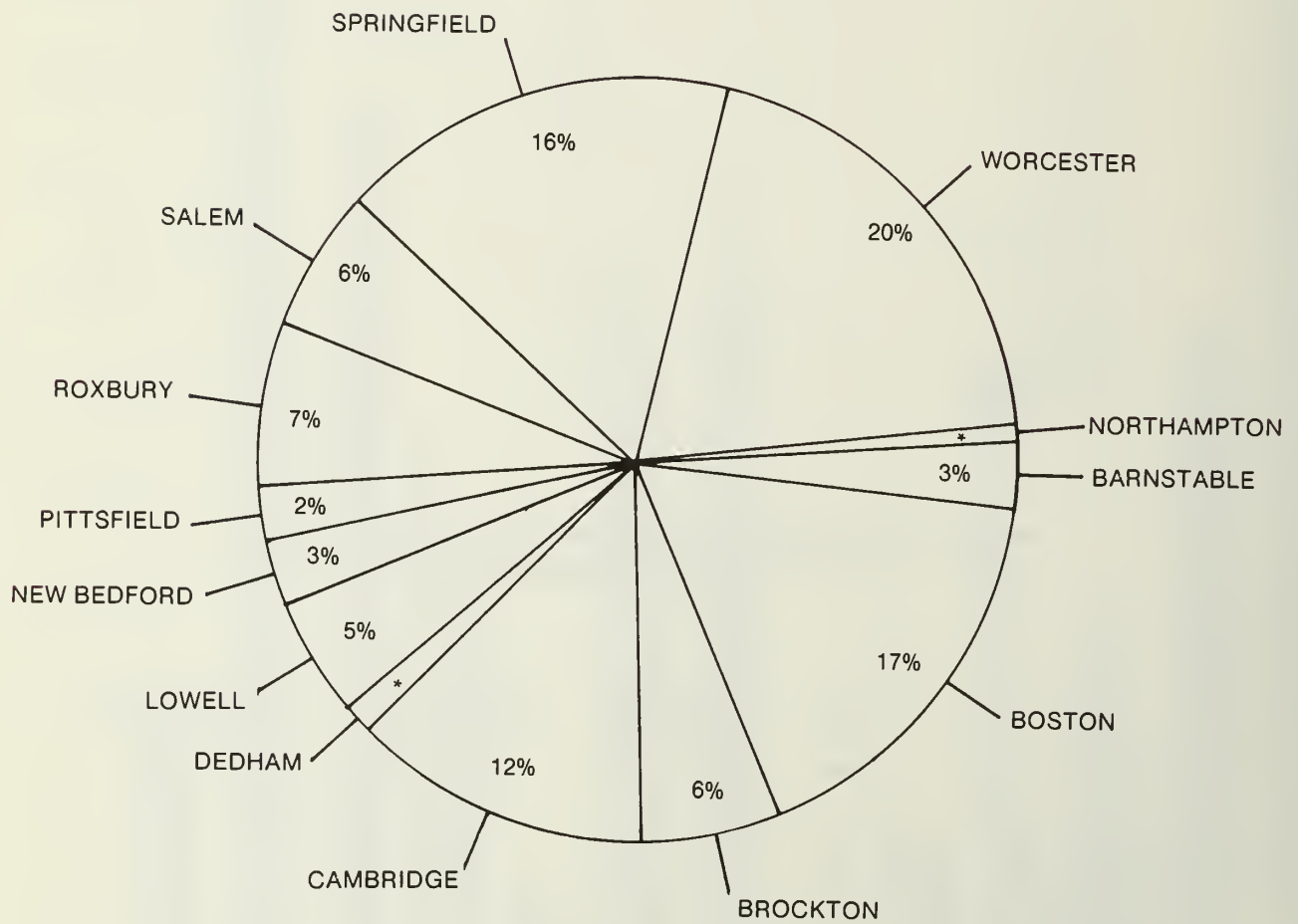
	<u>TOTAL</u>	<u>SUPERIOR COURT</u>	<u>JURY OF SIX</u>	<u>JUVENILE</u>
STATEWIDE	285	222	55	8
BARNSTABLE	8	3	5	—
BOSTON	48	39	1	8
BROCKTON	18	12	6	—
CAMBRIDGE	33	25	8	—
DEDHAM	6	5	1	—
LOWELL	13	11	2	—
NEW BEDFORD	9	8	1	—
NORTHAMPTON	1	1	—	—
PITTSFIELD	7	5	2	—
ROXBURY	20	20	—	—
SALEM	18	14	4	—
SPRINGFIELD	47	39	8	—
WORCESTER	57	40	17	—

PUBLIC COUNSEL DIVISION JURY TRIAL RESULTS FISCAL YEAR 1988

	<u>TOTAL</u>	<u>VERDICTS FAVORABLE*</u>	<u>VERDICTS UNFAVORABLE*</u>	<u>HUNG JURY OR OTHER MISTRIAL</u>
STATEWIDE	285	173 (60.7%)	102 (35.8%)	10 (3.5%)
BARNSTABLE	8	3	5	—
BOSTON	48	33	13	2
BROCKTON	18	8	8	2
CAMBRIDGE	33	17	14	2
DEDHAM	6	2	3	1
LOWELL	13	5	8	—
NEW BEDFORD	9	7	2	—
NORTHAMPTON	1	1	—	—
PITTSFIELD	7	6	1	—
ROXBURY	20	14	6	—
SALEM	18	10	6	2
SPRINGFIELD	47	29	17	1
WORCESTER	57	38	19	—

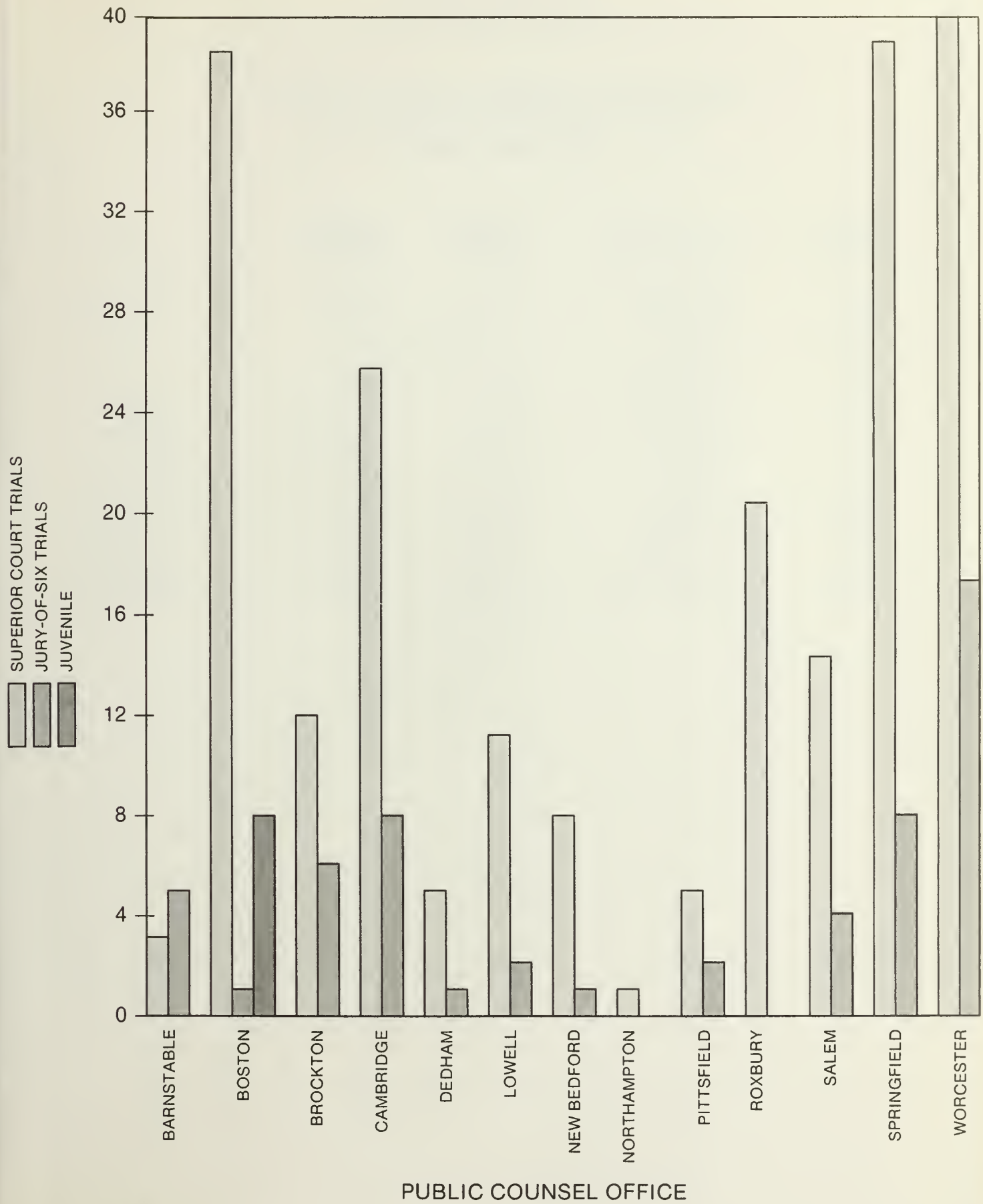
* "Verdicts Favorable" includes outright acquittals, and results where the jury acquits on the major charge or charges. "Verdicts Unfavorable" includes outright convictions, and results where the jury convicts on the major charge(s).

PUBLIC COUNSEL DIVISION — JURY TRIALS BY OFFICE
FISCAL YEAR 1988



* Less than 2%.

**PUBLIC COUNSEL DIVISION — JURY TRIALS BY OFFICE
FISCAL YEAR 1988**

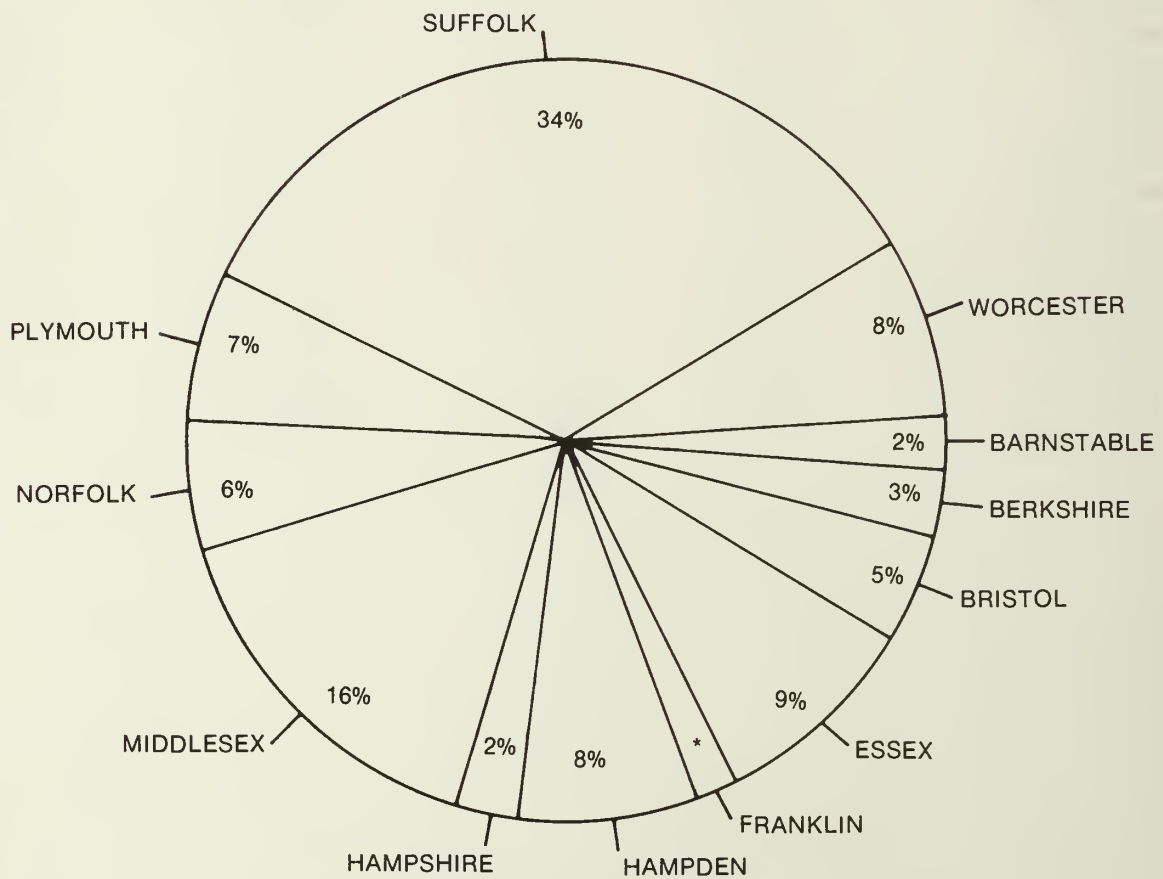


APPENDIX D

PRIVATE COUNSEL DIVISION ASSIGNMENTS DISTRICT COURT CRIMINAL CASES FISCAL YEAR 1988

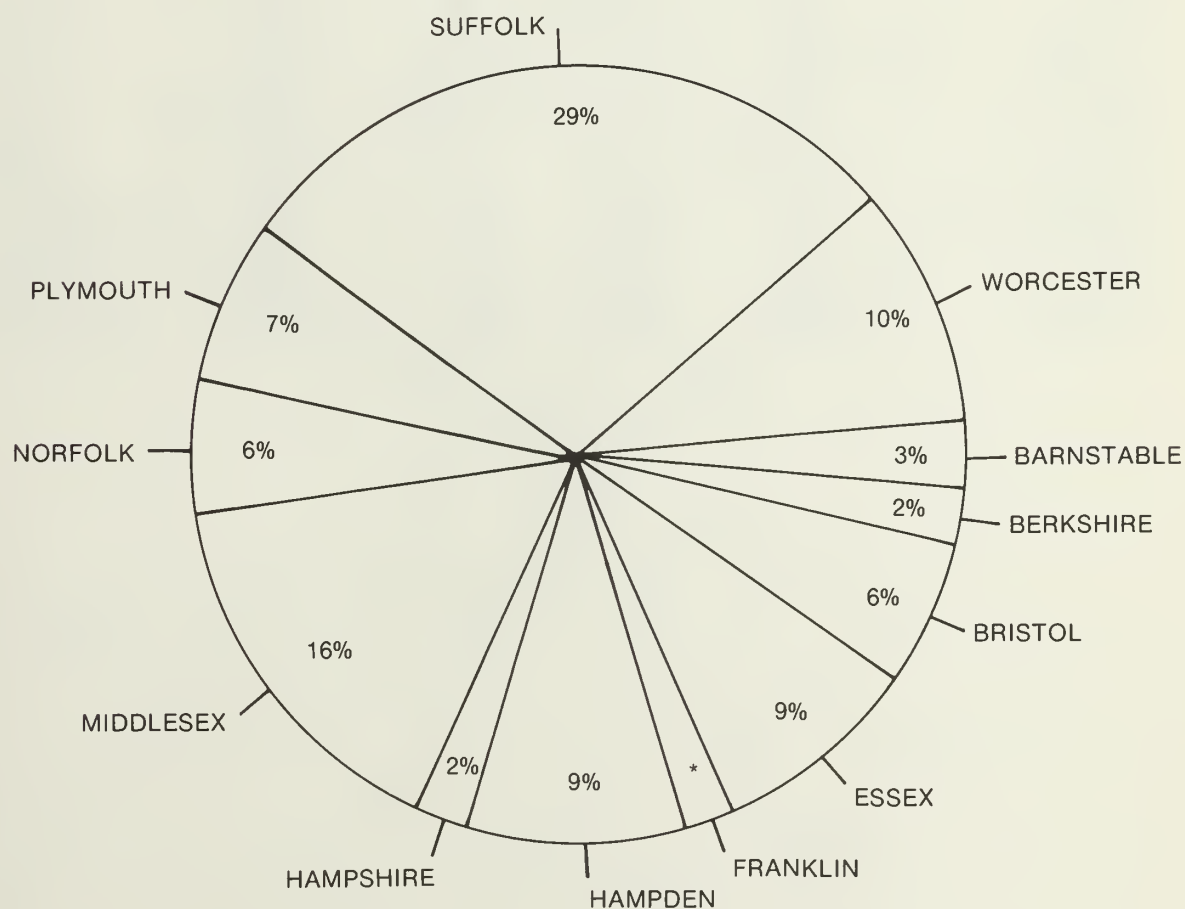
<u>COUNTY</u>	<u>CASES ASSIGNED</u>	<u>NUMBER OF BILLS</u>	<u>TOTAL EXPENDITURES</u>	<u>AVG COST/ CASE</u>
BARNSTABLE	3,218	2,729	\$ 286,888.02	\$105.13
BERKSHIRE	2,938	2,766	393,175.79	142.15
BRISTOL	7,336	5,777	604,604.64	104.66
DUKES	99	129	13,684.47	106.08
ESSEX	10,645	11,246	1,221,106.48	108.58
FRANKLIN	1,715	1,632	194,054.44	118.91
HAMPDEN	11,355	9,681	1,015,109.95	104.86
HAMPSHIRE	2,366	2,458	324,792.73	132.14
MIDDLESEX	19,670	18,674	2,137,139.52	114.44
NANTUCKET	102	59	6,853.25	116.16
NORFOLK	7,112	6,317	756,987.23	119.83
PLYMOUTH	7,959	7,386	913,504.98	123.68
SUFFOLK	35,118	38,132	4,483,047.63	117.57
WORCESTER	12,303	11,224	1,029,917.68	91.76
STATEWIDE	121,936	118,210	\$13,380,866.81	\$113.20

PRIVATE COUNSEL DIVISION
DISTRICT COURT CRIMINAL CASES — EXPENDITURES BY COUNTY
FISCAL YEAR 1988



* Less than 2%.

**PRIVATE COUNSEL DIVISION
DISTRICT COURT CRIMINAL CASES — ASSIGNMENTS BY COUNTY
FISCAL YEAR 1988**

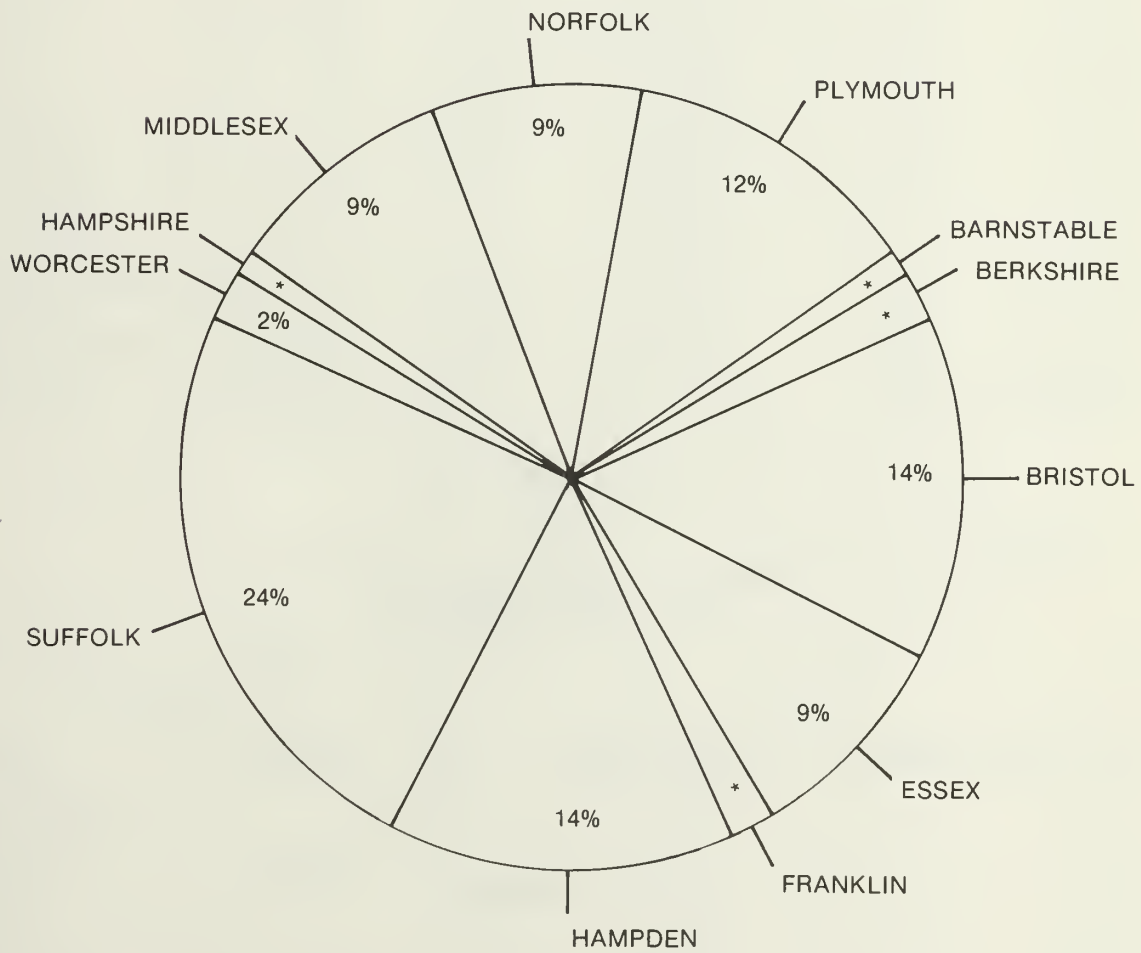


* Less than 2%.

**PRIVATE COUNSEL DIVISION ASSIGNMENTS
SUPERIOR COURT CRIMINAL CASES
FISCAL YEAR 1988**

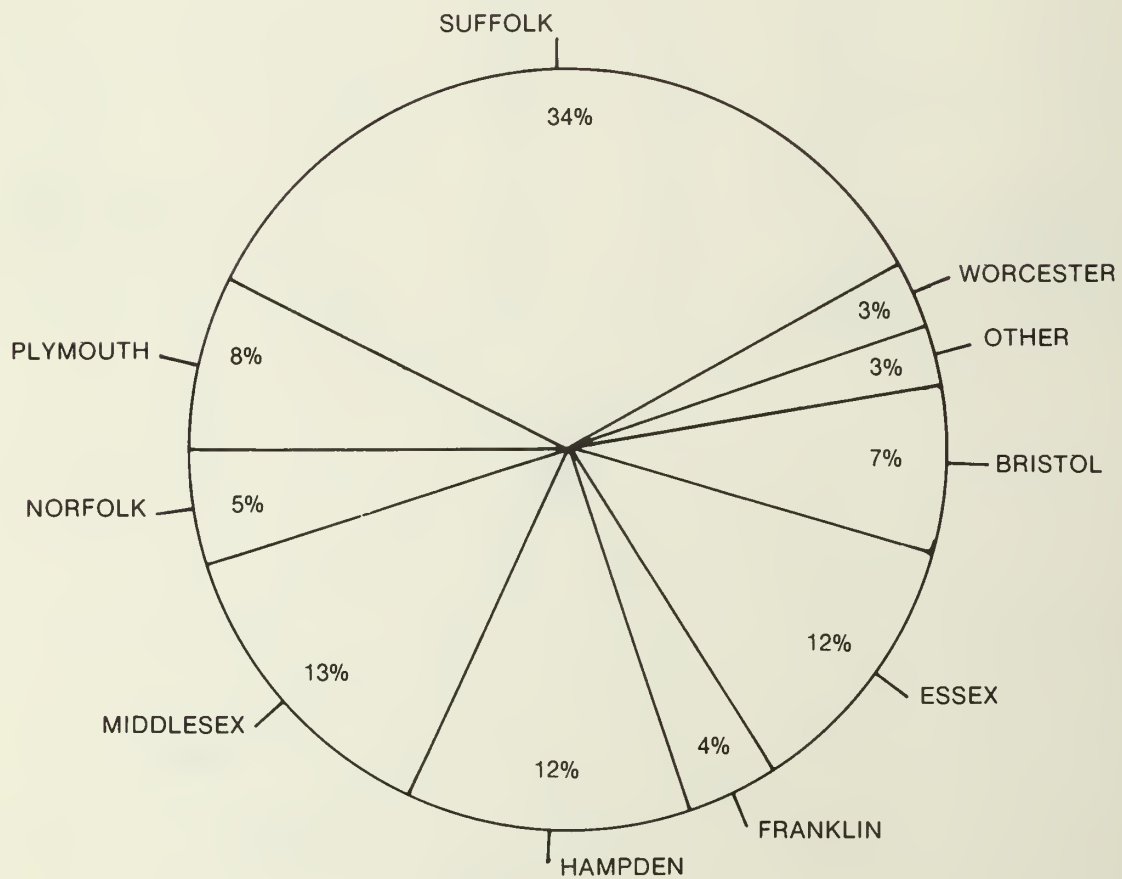
<u>COUNTY</u>	<u>CASES ASSIGNED</u>	<u>NO. BILLS</u>	<u>NO. CLOSED</u>	<u>AVG COST/ CASE</u>	<u>TOTAL EXPENDITURES</u>
BARNSTABLE	51	61	48	\$ 383.07	\$ 20,103.11
BERKSHIRE	82	53	32	634.62	25,088.00
BRISTOL	616	582	484	288.53	192,732.32
DUKES	0	9	4	774.06	3,218.75
ESSEX	374	369	268	267.72	208,257.84
FRANKLIN	73	136	98	959.78	97,122.17
HAMPDEN	608	724	471	568.98	311,540.32
HAMPSHIRE	28	32	22	518.69	17,542.97
MIDDLESEX	402	406	250	1,019.91	339,143.46
NANTUCKET	3	7	7	218.04	1,526.25
NORFOLK	375	336	269	172.96	124,688.24
PLYMOUTH	512	417	360	380.16	195,490.04
SUFFOLK	1,036	1,484	981	740.19	891,293.07
WORCESTER	95	100	69	714.46	68,090.81
STATEWIDE	4,255	4,716	3,363	\$ 547.71	\$2,495,837.35

PRIVATE COUNSEL DIVISION
SUPERIOR COURT CRIMINAL CASES — ASSIGNMENTS BY COUNTY
FISCAL YEAR 1988



* Less than 2%.

PRIVATE COUNSEL DIVISION
SUPERIOR COURT CRIMINAL CASES — EXPENDITURES BY COUNTY
FISCAL YEAR 1988



APPENDIX E

ALL NONCRIMINAL CASES FISCAL YEAR 1988

<u>COUNTY</u>	<u>CASES ASSIGNED</u>	<u>NO. BILLS</u>	<u>CURRENT CLOSING EXPENDITURES</u>	<u>NO. CLOSED</u>	<u>AVG COST/ CASE</u>
BARNSTABLE	213	124	\$ 29,737.25	105	\$297.36
BERKSHIRE	399	299	50,354.82	231	217.99
BRISTOL	1,050	1,083	226,131.38	844	281.32
DUKES	9	4	332.50	4	144.38
ESSEX	704	619	141,435.57	491	310.93
FRANKLIN	231	266	83,028.38	203	417.85
HAMPDEN	1,114	1,059	208,434.74	803	287.32
HAMPSHIRE	367	428	97,070.62	367	272.11
MIDDLESEX	1,987	1,933	454,812.99	1,601	304.41
NANTUCKET	3	4	2,425.65	3	865.55
NORFOLK	678	582	132,838.63	470	311.66
PLYMOUTH	1,481	1,445	253,528.90	1,291	203.78
SUFFOLK	1,940	2,210	558,673.87	1,626	436.74
WORCESTER	1,637	1,457	214,128.23	1,234	178.87
STATEWIDE	11,813	11,513	\$2,452,933.53	9,273	\$293.11

CIVIL COMMITMENT CASES FISCAL YEAR 1988

<u>COUNTY</u>	<u>CASES ASSIGNED</u>	<u>NO. BILLS</u>	<u>CURRENT CLOSING EXPENDITURES</u>	<u>NO. CLOSED</u>	<u>AVG COST/ CASE</u>
BARNSTABLE	32	29	\$ 6,161.70	27	\$228.21
BERKSHIRE	6	5	770.49	5	154.10
BRISTOL	220	236	40,148.80	227	176.87
DUKES	0	0	0.00	0	0.00
ESSEX	108	108	22,618.75	106	213.38
FRANKLIN	10	10	918.80	9	102.09
HAMPDEN	3	4	227.50	4	56.88
HAMPSHIRE	194	184	38,899.91	183	212.57
MIDDLESEX	154	184	35,355.09	182	194.26
NANTUCKET	0	0	0.00	0	0.00
NORFOLK	161	154	25,542.61	149	172.01
PLYMOUTH	654	621	91,050.29	595	153.32
SUFFOLK	196	213	35,967.50	206	174.60
WORCESTER	294	257	23,867.08	254	93.96
STATEWIDE	2,032	2,005	\$321,528.52	1,947	\$165.28

**CHINS CASES
FISCAL YEAR 1988**

<u>COUNTY</u>	<u>CASES ASSIGNED</u>	<u>NO. BILLS</u>	<u>CURRENT CLOSING EXPENDITURES</u>	<u>NO. CLOSED</u>	<u>AVG COST/ CASE</u>
BARNSTABLE	49	24	\$ 2,798.75	19	\$147.30
BERKSHIRE	157	158	19,602.26	125	156.82
BRISTOL	379	315	48,433.35	237	205.34
DUKES	2	2	148.75	2	74.38
ESSEX	148	141	19,415.00	104	189.31
FRANKLIN	87	122	13,881.80	88	157.75
HAMPDEN	430	357	49,319.00	288	176.10
HAMPSHIRE	32	46	8,481.41	36	238.51
MIDDLESEX	594	409	55,238.26	309	185.54
NANTUCKET	0	0	0.00	0	0.00
NORFOLK	102	116	14,780.46	85	185.11
PLYMOUTH	243	235	25,381.25	178	142.85
SUFFOLK	141	96	10,752.54	68	192.98
WORCESTER	664	600	58,309.09	510	116.99
STATEWIDE	3,028	2,621	\$326,541.92	2,049	\$163.67

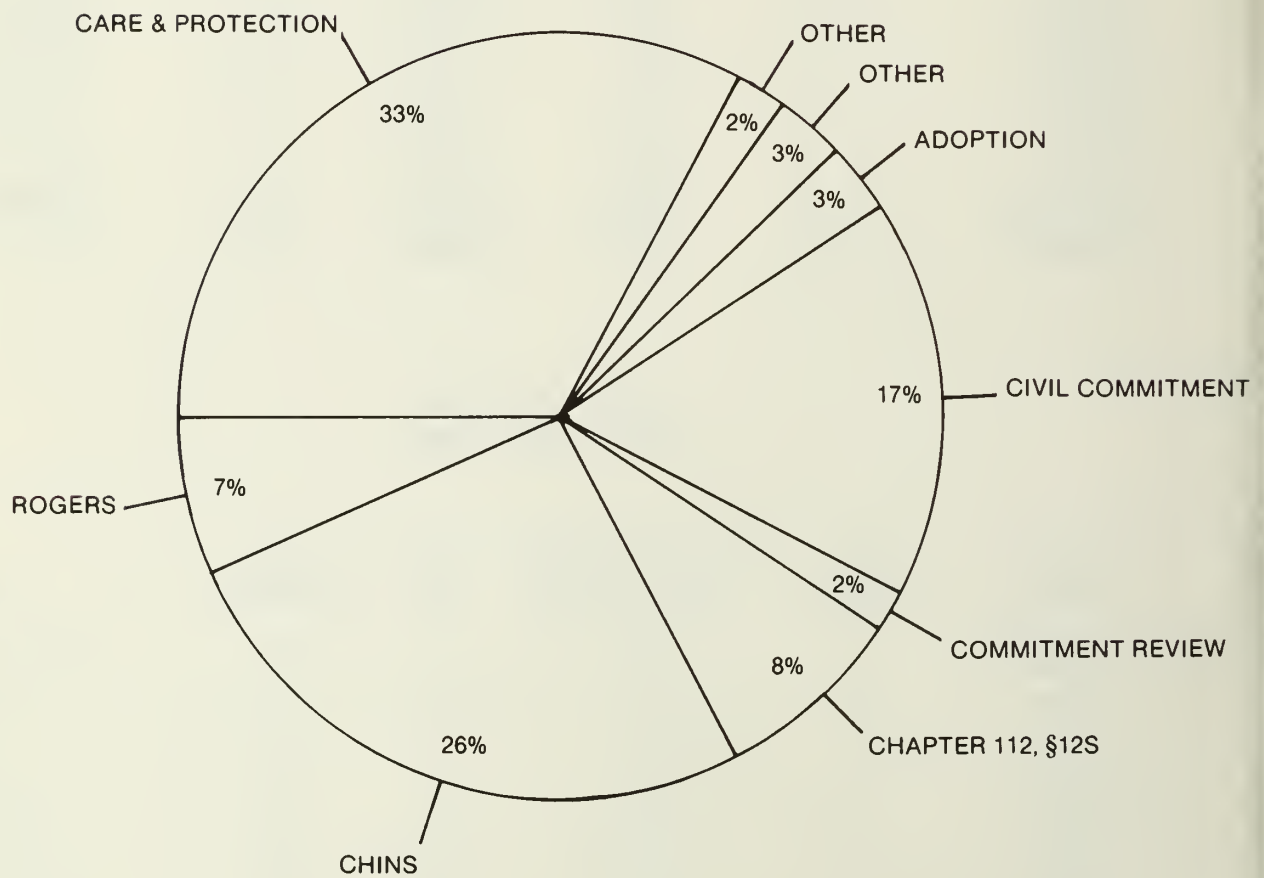
**ROGERS CASES
FISCAL YEAR 1988**

<u>COUNTY</u>	<u>CASES ASSIGNED</u>	<u>NO. BILLS</u>	<u>CURRENT CLOSING EXPENDITURES</u>	<u>NO. CLOSED</u>	<u>AVG COST/ CASE</u>
BARNSTABLE	35	12	\$ 2,633.75	9	\$394.72
BERKSHIRE	6	7	2,765.00	5	553.00
BRISTOL	85	43	9,574.87	37	258.78
DUKES	0	0	0.00	0	0.00
ESSEX	69	42	15,594.20	35	445.55
FRANKLIN	3	1	347.46	1	347.46
HAMPDEN	34	21	6,189.72	17	364.10
HAMPSHIRE	62	47	15,500.82	34	455.91
MIDDLESEX	104	136	46,650.99	122	389.45
NANTUCKET	0	0	0.00	0	0.00
NORFOLK	77	34	11,638.15	28	460.49
PLYMOUTH	91	97	15,385.10	95	163.05
SUFFOLK	133	92	27,606.17	70	424.87
WORCESTER	109	93	20,848.45	83	271.64
STATEWIDE	808	625	\$174,734.68	536	\$339.01

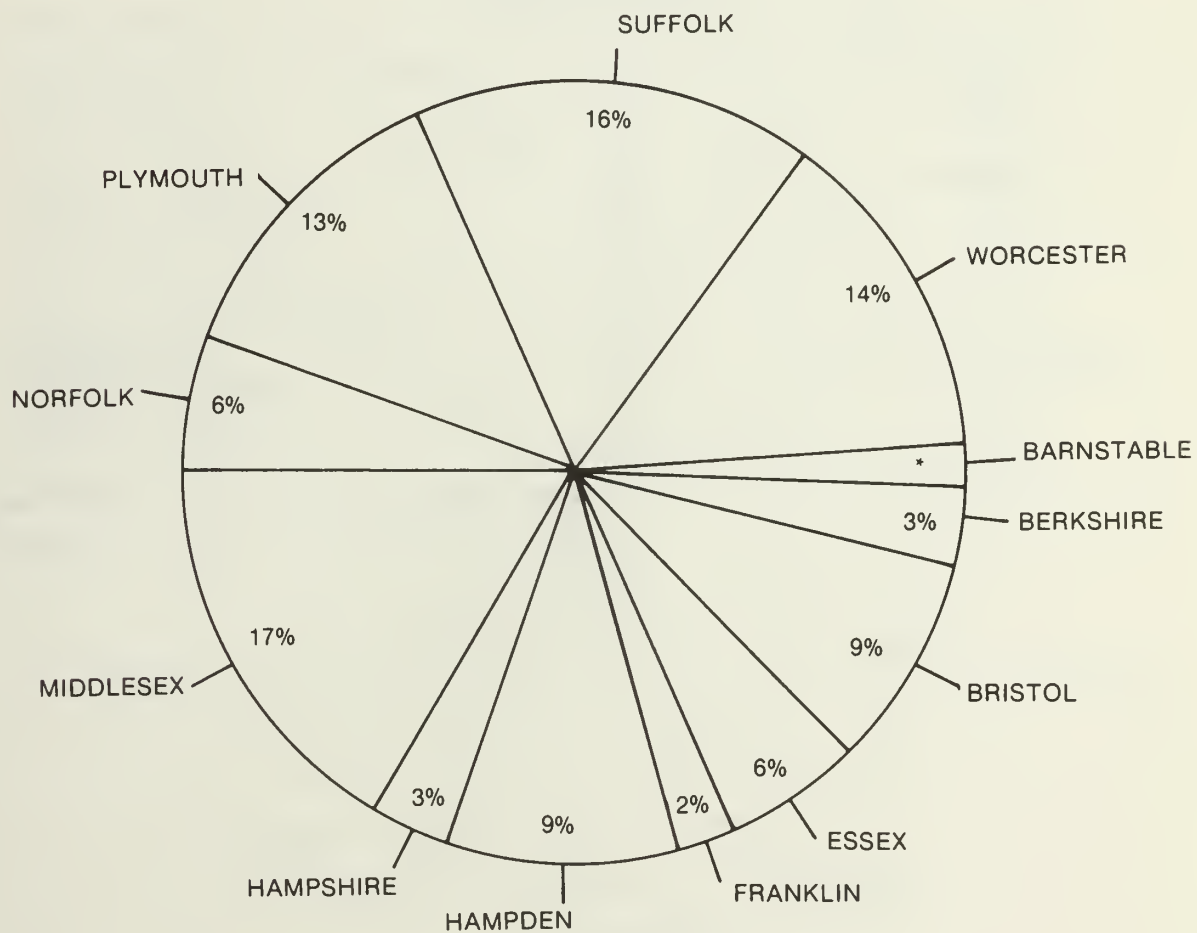
**CARE AND PROTECTION CASES
FISCAL YEAR 1988**

<u>COUNTY</u>	<u>CASES ASSIGNED</u>	<u>NO. BILLS</u>	<u>CURRENT CLOSING EXPENDITURES</u>	<u>NO. CLOSED</u>	<u>AVG COST/ CASE</u>
BARNSTABLE	64	25	\$ 9,849.45	19	\$518.39
BERKSHIRE	186	91	18,950.62	64	296.10
BRISTOL	237	354	89,331.09	233	386.78
DUKES	0	0	0.00	0	0.00
ESSEX	238	148	34,102.50	102	346.69
FRANKLIN	59	57	16,013.85	44	365.74
HAMPDEN	479	396	89,637.22	260	373.87
HAMPSHIRE	37	54	14,151.23	41	351.98
MIDDLESEX	573	387	99,146.51	256	432.41
NANTUCKET	1	0	0.00	0	0.00
NORFOLK	178	121	42,145.56	82	574.79
PLYMOUTH	133	134	31,315.20	91	367.78
SUFFOLK	916	886	216,700.97	458	606.44
WORCESTER	332	322	75,211.83	226	338.14
STATEWIDE	3,433	2,975	\$736,556.03	1,876	\$441.08

**NONCRIMINAL CASES BY CASE TYPE
FISCAL YEAR 1988**

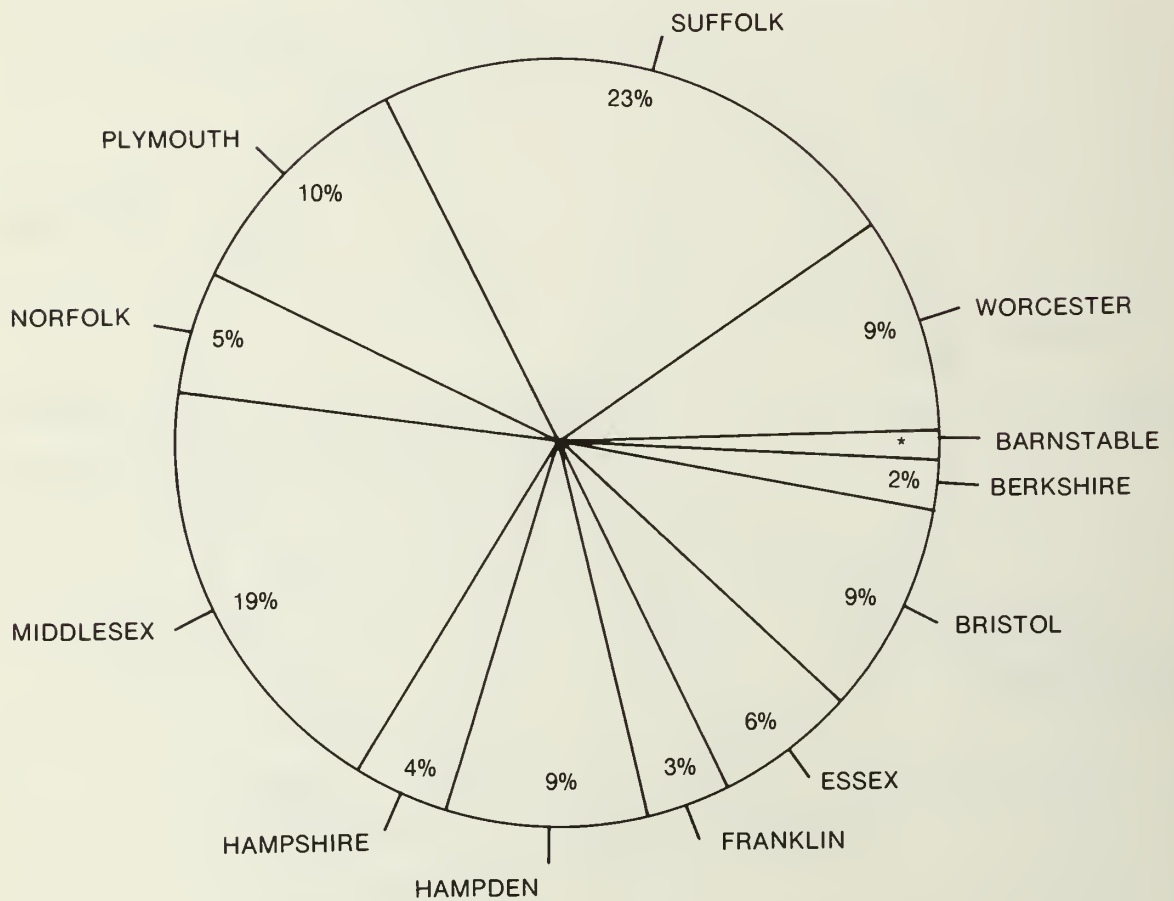


**NONCRIMINAL CASES — ASSIGNMENTS BY COUNTY
FISCAL YEAR 1988**



* Less than 2%.

**NONCRIMINAL CASES — EXPENDITURES BY COUNTY
FISCAL YEAR 1988**



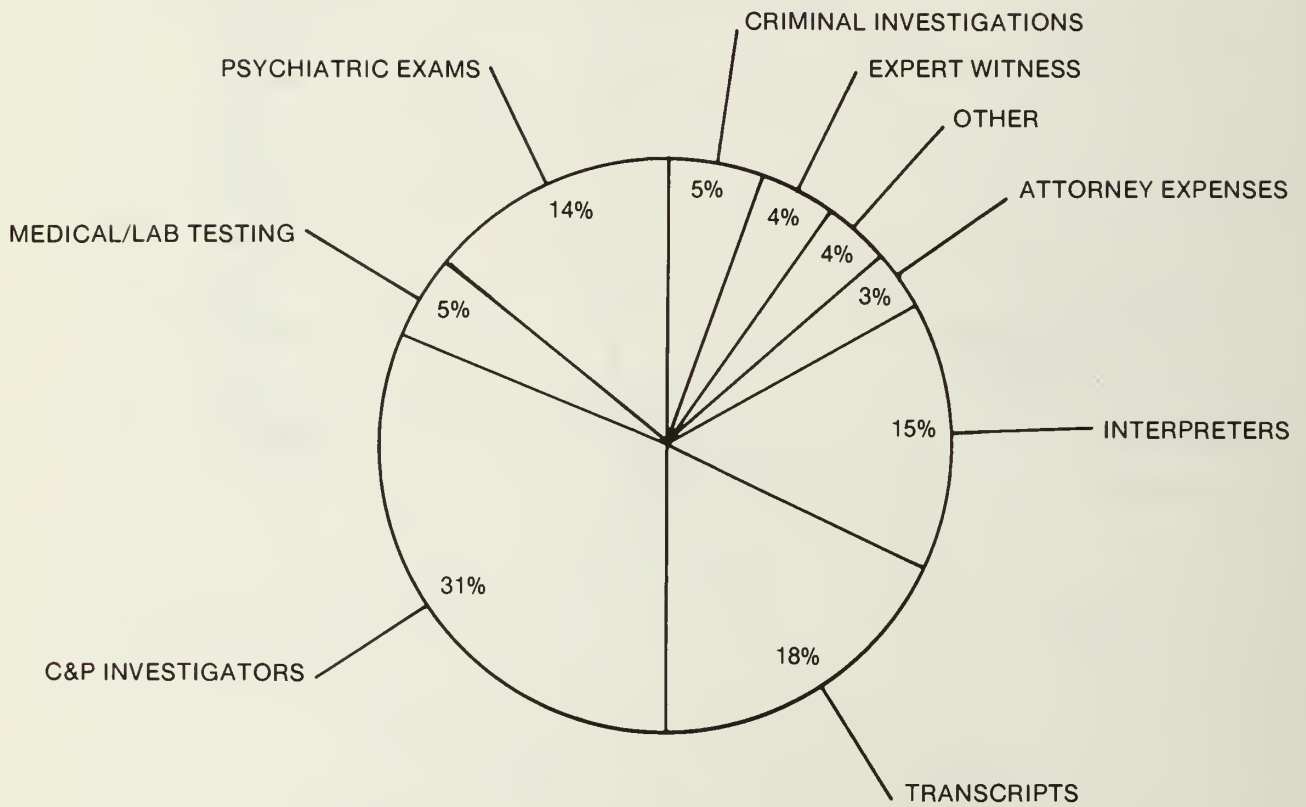
* Less than 2%.

APPENDIX F

INDIGENT COURT COSTS FISCAL YEAR 1988

<u>SERVICE TYPE</u>	<u>TOTAL INDIVIDUAL PAYMENT VOUCHERS</u>	<u>TOTAL DOLLARS</u>
INTERPRETERS	2,393	\$ 213,241
TRANSCRIPTS	716	246,652
C&P INVESTIGATORS	624	437,181
PUBLIC NOTICE	149	16,183
SERVICE & SUMMONS	587	22,687
MEDICAL/LAB TESTING	167	65,661
PSYCHIATRIC EXAM	287	200,246
INVESTIGATIONS	93	68,768
EXPERT WITNESS/ANALYSTS	132	62,132
POLYGRAPHS	19	7,979
ATTORNEY EXPENSES	312	48,461
COPYING/PRINTING	6	2,145
OTHER EXPENSES	13	2,664
TOTAL	5,498	\$1,394,000

**INDIGENT COURT COSTS
FISCAL YEAR 1988**



APPENDIX G

PRIVATE AND PUBLIC COUNSEL DIVISIONS ASSIGNMENT OF MURDER CASES FISCAL YEAR 1988

PRIVATE COUNSEL

No. of Approved Attorneys 151

BREAKDOWN OF COUNTIES

Barnstable	1
Berkshire	1
Bristol	16
Essex	11
Franklin	2
Hampden	25
Hampshire	1
Middlesex	21
Norfolk	5
Plymouth	6
Suffolk	54
Worcester	14

TOTAL CASES 157

PUBLIC COUNSEL

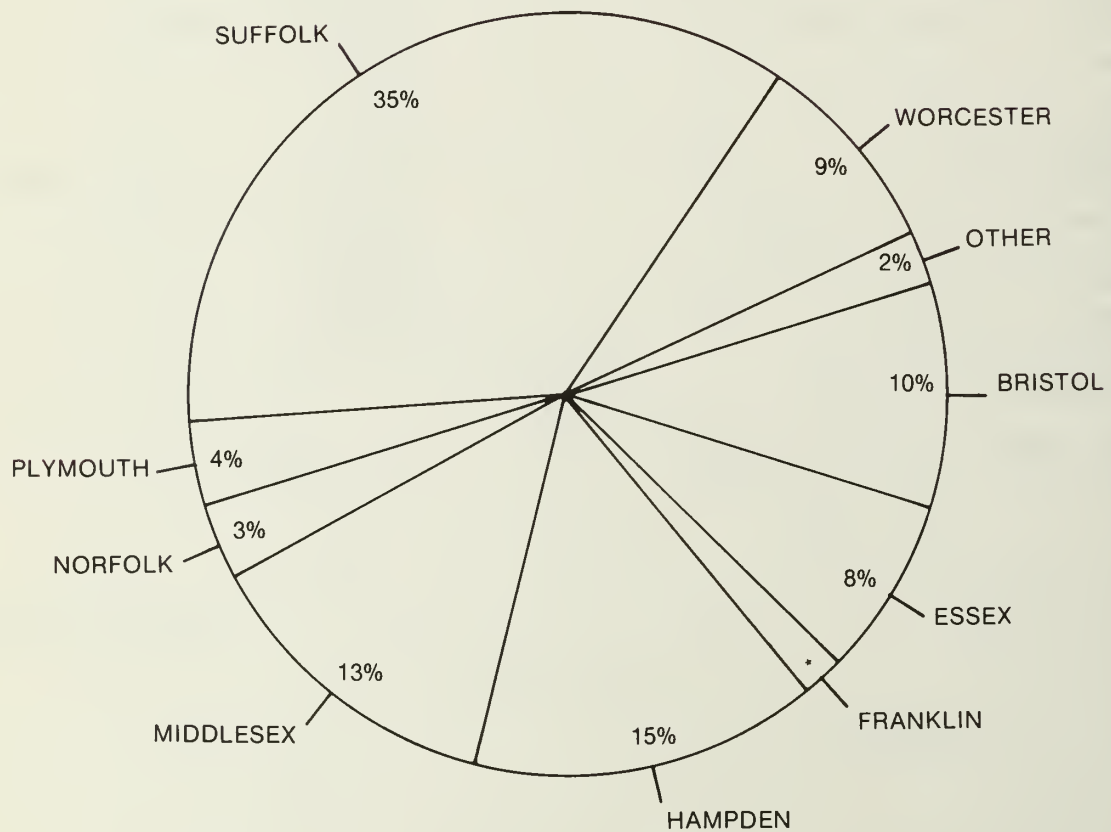
No. of Approved Attorneys 11

BREAKDOWN OF COUNTIES

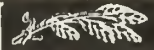
Barnstable	0
Berkshire	0
Bristol	0
Essex	2
Franklin	0
Hampden	0
Hampshire	0
Middlesex	1
Norfolk	0
Plymouth	0
Suffolk	4
Worcester	1

TOTAL CASES 8

**ASSIGNMENT OF MURDER CASES BY COUNTY
FISCAL YEAR 1988**



*Less than 2%.



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AN INTERNATIONAL DAILY NEWSPAPER TUESDAY, MARCH 22, 1988

50¢ (60¢ Canadian)

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THE CHRISTIAN SCIENCE MONITOR

The world of a public defender

'We are the living Constitution'

Page in
room 817
at Suffolk
County
Courthouse



© The Christian Science Monitor/Neal Menschel

■ Making sure
'people without
power' get their
day in court, says
public defender
Stephanie Page,
protects everyone.
'When I keep the
cops out of a
vagrant's pockets,
I keep them out of
your bedroom.'

James H. Andrews
Staff writer of The Christian Science Monitor

Boston
STEPHANIE PAGE can't sit still. She paces the nearly empty courtroom as though measuring it for carpeting. She leans over the defense counsel's table, fussing with notes she's studied a dozen times. She looks again at the clock on the wall, pulls on her trademark bottle of diet cola, and resumes pacing.

Let the record in the case of the Commonwealth of Massachusetts v. Lawyer Johnson show that the attorney for the accused, public defender Stephanie Page, is — as usual — the first to arrive in court, exhaustively prepared, and impatient.

"C'mon, Judge, c'mon," she mutters.

Part of Ms. Page's fidgetiness is simply "butterflies." Even after nine years of arguing before juries, she still experiences the clammy palms and abdominal churning. "When someone's fate is in my hands and I *don't* get nervous," she says, "I'll know it's time to quit."

But there's another reason for her anxiety, as well: She's convinced that her client didn't commit the assault, attempted rape, and robbery with which he's charged. Moreover, she's got what she thinks is an air-tight defense. Yet these facts offer only cold comfort.

"I hate cases like this," she groans. "The cops have the wrong

guy, and if something goes wrong, if we lose, it'll just kill me."

She grins. "Now, if my guy *did* do it and I had a defense like this, the case would be *fun*."

At last there is stirring. Various court officers and the stenographer enter and take their places. Lawyer Johnson is led in and his handcuffs removed. In his mid-30s, he is older than most of Page's clients, many of whom are barely adults. Like nearly all of them, however, Mr. Johnson comes from an impoverished background and has a prison record. He may be not guilty this time, but he's hardly innocent. Public defenders don't encounter many choirboys.

"All rise," the bailiff intones as the judge enters the chamber.

★ ★ ★

Why do you do it? That's the question, spoken and unspoken, that public defenders are asked over and over again — by family, friends, other lawyers, casual acquaintances.

Why do you spend your days with "lowlives"? Why do you work those long hours for relatively meager pay? Why do you throw sand into the gears of the criminal-justice system? Why do you try to put murderers and muggers, rapists and robbers, back onto the street?

The answers to these questions are as different as the men and women who are asked them. They are a complex amalgam of reasons personal, philosophical, and political.

From the moment she entered law school at Northeastern University, Stephanie Page didn't want to be anything but a PD. "I sympathized with people who are without power," she says. It probably had to do with her own upbringing, she speculates. Page grew up in a low-income family in rural New Hampshire. After high school, she worked in a shoe factory for four years before enrolling in a local community college. Then a scholarship got her to Vassar for two years, and law school followed.

In 1978 Page joined what now goes under the unwieldy moniker of the Massachusetts Committee for Public Counsel Services. The committee's lawyers represent indigent defendants charged with

serious crimes and coordinate the work of a network of private lawyers who represent the poor in lesser criminal cases.

The committee has 12 offices around the state. Page works out of the largest of these, the Suffolk County office, which covers Boston.

After nearly a decade, she is one of the most experienced of the 22 trial lawyers in her office. For her work, which includes — in addition to a heavy load of ongoing cases — many nights and weekends spent doing research, discharging administrative duties, or at the scenes of crimes being her own gumshoe, Page makes less than two-thirds the salary paid to starting lawyers at Boston's major law firms.

★ ★ ★

On the night of Aug. 6, 1986, as Nancy Randolph (not her real name) walked along a Boston street, a black man ran up behind her, dragged her 50 feet into dark shadows, and tried to force himself upon her. When she struggled, the man grabbed her purse and sprinted off into the night. Several weeks later, Randolph pointed to a photo of Lawyer Johnson and told a police detective, "That's the one."

Seventeen days before the incident, on July 20, 1986, Johnson had broken his ankle. He was put into a cast that went from his foot to his thigh. When he visited a doctor for a checkup on Aug. 18, his leg was still encased. Page has medical records establishing the chronology, and she also has expert testimony from two physicians about the limited mobility of a man in Johnson's condition.

★ ★ ★

To be sure, public defenders don't have the greatest working conditions: long days, modest pay, hours spent interviewing clients in dingy holding cells. What's not true about PDs — at least in Boston — is that they don't have the time to do the job properly: PDs have the time and, by and large, the resources to be the best defense lawyers they are capable of being.

"We do everything that needs to be done to represent our clients," Page says emphatically. "We never compromise on that." Since

they don't have to bill their clients for their time or for the costs of such services as private investigators, medical or psychiatric tests, and expert witnesses, PDs don't have to make the difficult corner-cutting choices that confront many private defense lawyers.

PDs can ask the court for funds for special defense needs, and usually get the money. In deciding whether to perform a test, hire an investigator, or bring in an expert, Page says, "Our standard is, if the client were a millionaire and could pay for it out of his own pocket, would we do it? If the answer is yes, we do it."

The satisfaction of doing a difficult job right, and gaining the affection and respect of their co-workers, are among the few rewards PDs get, however. Certainly they get little enough appreciation from the public at large — who mainly see defense lawyers as mouthpieces for the "bad guys" and masters of "legal technicalities" — and still less from police, prosecutors, and even judges.

Partly this is because the other participants in the criminal-justice system fret that PDs slow down the process. But also, PDs say, the hostility from officialdom they encounter stems from contempt for their clients. "Everyone in the system is after your client," says Arnold Rosenfeld, the committee's chief counsel and Page's boss. "You are his only defender. The presumption of innocence doesn't actually operate for poor criminal defendants. PDs must act on the assumption that they have the burden of proof, not the commonwealth."

Says Page, "You always have to keep people mindful that your client is a human being. The prosecutor has the whole power of government behind him. He's got the police, he's got detectives, he's got all sorts of resources, and he's got the pre-disposition of jurors to believe in their police and their government. "All the defendant's got is me. But that prosecutor has to go through me to get my client, and I'm going to make it as hard for him as I can."

Not that PDs can expect much gratitude from their clients, either. "Clients rarely say thanks," Mr. Rosenfeld says. "Our gratification has to come from knowing we did

the best we could and, to some extent, saw justice done, whether the client knows it or not."

"Here's how a lot of clients look at us," says Page. "The Constitution says you must have a lawyer to go to jail. So we're the lawyers who make it legal for the state to

ent but polite. The policeman holds his ground.

Out of earshot Page mutters, "He's lying through his teeth."

★ ★ ★

What about the police, she is asked. In the years since Miranda

about calling attention to what she sees as misconduct, however, because in most cases it would be counterproductive. "Jurors want to believe that police tell the truth," she says; "they want to believe that their government is doing the right thing. You have to be careful about disabusing them of those feelings." Even when she thinks that a witness is lying, she'll comment to jurors on how "we all make mistakes" and have "lapses of memory."

She can be tough in cross-examination, though, which she calls the real art of her profession. She recalls with glee the time a prosecution witness became so roiled as she shredded his testimony that he stood up and took a swing at her.

Page is also very protective of her reputation with judges. She says she never tries to make a judge look bad or engage in showy or dilatory tactics simply for their own sake. "Everything I say to a judge has to be true. When I

'I don't believe in a sliding scale of justice. The Constitution applies to all of us equally.'

— Stephanie Page

send them away. To them, we're just another part of the system . . ."

Page is cross-examining a police officer about discrepancies in two descriptions of her assailant given by Nancy Randolph. Page intimates that the second description, which more closely resembled Johnson than one Randolph gave immediately after the incident, resulted from coaching by the officer. Page is persist-

and other Supreme Court decisions tightened the restrictions on police procedures, have the forced confessions and other abuses ceased? "Of course there are fewer police beatings and things like that," Page says. "But there is still plenty of misconduct. The police have just gotten better at it. They know what to say [on the stand], how to testify so that misconduct doesn't come out."

Page says she is circumspect



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Counseling a prisoner at the Charles Street Jail: 'The prosecution has the whole power of government behind him . . . all the defendant's got is me.'

appear before a judge, my credibility is the biggest asset I and my client have. I can't afford to squander it."

★ ★ ★

Page has rested her defense without putting Johnson on the stand. The Fifth Amendment gives defendants the right to be silent, and Page says she calls her clients to testify only when "absolutely necessary." The defendant is likely to be nervous and inarticulate. "I'd rather have my client sitting at the defense table looking good than sitting on the stand sounding bad," she says.

The PD delivers her closing argument. She rehearses the facts and lets sarcasm enter her voice as she debunks the prosecutor's suggestion that Johnson could have removed his cast, committed the crime, and replaced the cast before his next doctor's visit. She concludes: "What happened to Nancy Randolph was dreadful. But don't compound the horror by convicting an innocent man. If Lawyer Johnson wins, that doesn't mean that Nancy Randolph loses, or that the Commonwealth of Massachusetts loses. Nobody wins when an innocent man goes to jail."

★ ★ ★

The question persists: Why does she do it? OK, maybe the police arrested the wrong man in this mugging. But what about the two rapists Page defended a

month ago? What about that murderer last year? What about the child molesters, or the guys who beat up old people for a few dollars, or the ones who deal crack to school kids? What about the 90 percent of her cases that end in plea bargains because the evidence against the defendants is too strong to go before a jury? How can she defend those people?

The ever-intense Page becomes even more so. "I don't believe in a sliding scale of justice. The Constitution applies to all of us equally. And, believe it or not, I've almost never had a client I couldn't like as a person. They're people, too."

She warms to her subject. "There are lots of victims in our system of justice. The victims of crime are just one kind of victim. What about the people whose lives are ruined because they're falsely accused, who have the full weight of government fall on them for something they didn't do? Lawyer Johnson served 10 years in prison for a murder he didn't commit, before they caught the right guy.

"And talking about victims, we have a society that allows families to live in poverty for generation after generation," Page continues. "We let kids graduate from high school not even knowing how to read, and without any life prospects. The criminal-justice system is just the tip of the iceberg of the lives the poor lead. These people come to me with *no hope*. I won't

have any trouble doing this job until society makes sure everyone is treated equally.

"You asked if people like me aren't proof that our criminal-justice system is fair. I would *never* say to a client, 'Look, I got you off, or I got your sentence reduced, so the system works.' That would be a disservice to them, because it might make them let down their guard. For them the system *doesn't* work; it's oppressive."

She pauses. There are things that have been left unsaid, about individual free will, and human depravity, and the right of people in an ordered society to be free of crime. Yet the passion — and the truth — of her words hang in the air.

"I'll tell you another thing," Page continues. "You benefit from what I do, too. When I keep the cops out of a vagrant's pockets on the street, I keep them out of your bedroom. I really believe that. We're the living Constitution."

★ ★ ★

On Friday, March 4, 1988, the jury finds Lawyer Johnson not guilty. On Monday, a new case awaits Stephanie Page.

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